

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PUBLIC INTEREST

The Director of the Department of Consumer and Regulatory Affairs pursuant to D.C. Law 2-144, effective March 3, 1979-, "**The Historic Landmark and District Protection Act of 1978**" hereby gives notice that the addresses listed below, as requested permission to demolish, altar, sub-divide or erect new structures at the following location(s):

Application Date	Address	Lot	Square	Use
8/8/03	1830 11 th Street, NW	805	306	Concept
	1306 34 th Street, NW	831	1228	Roof Scaffold/SFD
	3311 Ross Place, NW	35	2085	Enclosed porch dormer/SFD
8/11/03	1229 30 th Street, NW	10	1211	Window fence/SFD
8/12/03	3012 Dumbarton Street, NW	3	1233	Stoop/SFD
	1680 31 st Street, NW	31	1281	Add/SFD
	3222 M Street, NW	868	1200	Concept
	2720 O Street, NW	813	1269	Concept

**DEPARTMENT OF CONSUMER AND REGULATORY
AFFAIRS****NOTICE OF PUBLIC INTEREST**

Forwarded for your information is a weekly listing of **raze permit application** filed with the Permit Service Center of the Building and Land Regulation Administration, requesting a permit to raze listed structures with the District of Columbia.

Application Date	Address	Lot	Square	Use
8/7/03	3000 University Terrace, NW	903	1426	2-story SFD w/Bsmt.
	2131 & 2133 10 th Street, NW	58/59	358	1-story Building
	1815 Pennsylvania Avenue, NW	59	105	13-story office building
	1819 Pennsylvania Avenue, NW	59	105	12-story office building

**BOARD OF ELECTIONS AND ETHICS
CERTIFICATION OF ANC/SMD VACANCIES**

The District of Columbia Board of Elections and Ethics hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Code §1-309.06(d) (2) [(2001 Ed.)].

VACANT: **4A05**
 8E01

Petition Circulation Period: **Tuesday, August 5, 2003 thru Monday, August 25, 2003**

Petition Challenge Period: **Thursday, August 28, 2003 thru Wednesday, September 4, 2003**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections and Ethics
441 - 4th Street, NW, Room 250N**

For more information, the public may call 727-2525.

Elsie Whitlow Stokes Community Freedom Public Charter School
3220 16th Street, NW
Washington, DC 20010

REQUEST FOR BIDS

NOTICE: REQUEST FOR PROVIDING FOOD PREPARATION SERVICES

The Elsie Whitlow Stokes Community Freedom Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, hereby solicits expression of interest from contractors to provide quality, catered meals (breakfast, lunch and snacks) to be delivered fresh daily for the students during school year 2003-2004. Provider must offer both regular and strict vegetarian meals. Provider must comply with all regulations set by the USDA National Breakfast and Lunch Program. Interested contractors should state their credentials (including bonding information), how long they have conducted their business and provide references. Please contact Erika Bryant, Director of Operations, at 202-265-7237 (x103) for more details about program requirements. Proposals can be sent by fax to 202-265-4656 or by e-mail erikab@ewstokes.org. Final bids will be due by noon on August 22, 2003.

**NOTICE: REQUEST FOR PROVIDING COMMERCIAL CUSTODIAN/
CLEANING SERVICES**

The Elsie Whitlow Stokes Community Freedom Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, hereby solicits expression of interest from contractors to provide daily cleaning services, sanitation and upkeep of the building. Job requirements will include daily vacuuming, moping, sweeping, dusting, cleaning and buffing. Bathrooms, classrooms, food preparation area and offices require cleaning and sanitizing. Daily removal of trash to outside receptacles is also required. Cleaning will be required one Saturday per month. At least three (3) times a year arrangements should be made to clean carpets and floors as well as thorough building cleaning including: windows, trash cans, etc.

The bid quote should provide a separate line item, which will reflect the additional cost of supplies and materials necessary to maintain adequate paper products and soap for school facilities. Interested contractors should state their credentials (including bonding information), how long they have conducted their business and provide references. Please contact Erika Bryant, Director of Operations, at 202-265-7237 (x103) for more details about program requirements. Proposals can be sent by fax to 202-265-4656 or by e-mail erikab@ewstokes.org. Final bids will be due by noon on August 22, 2003.

NOTICE: REQUEST FOR PROVIDING COMPUTER HARDWARE SERVICES

The Elsie Whitlow Stokes Community Freedom Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995, hereby solicits expression of interest from contractors to provide quality computer equipment: fifty (50) laptop computers (minimum requirements: P4 2.2 GHz, 30GB, 256MB); twenty

(20) personal desktop computers (minimum requirements: P4, 2.0 GHz, 256MB, 40 GB, CD Rom); and a mobile lab (22-24 unit) cart to be used by school faculty, staff and students. Bidders should state brand name, specifications and model number of product bid. Interested contractors should state their credentials (including bonding information), how long they have conducted their business and provide references. Please contact Erika Bryant, Director of Operations, at 202-265-7237 (x103) for more details about program requirements. Proposals can be sent by fax to 202-265-4656 or by e-mail erikab@ewstokes.org. Final bids will be due by noon on August 29, 2003.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Executive Office of the Mayor

OFFICE OF PARTNERSHIPS AND GRANTS DEVELOPMENT

THIRD QUARTER REPORT ON DONATIONS APPROVED BY OPGD FOR FY 2003

Pursuant to Mayor's Order 2002-2 dated January 11, 2002, the Director of the Office of Partnerships and Grants Development (OPGD), in consultation with the Office of the Corporation Counsel's Ethics Counselor, is publishing the District's Third Quarter Report on Donations for Fiscal Year 2003. The Order requires the OPGD Director to review all requests by District officials to solicit or accept donations and approve or disapprove such requests as appropriate in accordance with the Rules of Conduct Governing Donations (Mayor's Memorandum 2002-1) and Section 115 of the 2003 D.C. Appropriations Act. This report includes data on all donation requests submitted to the Director for the period beginning April 1, 2003 and ending June 30, 2003. During this period, the OPGD Director approved the solicitation and/or acceptance of \$142,991 in donations of which \$2,265 represented financial contributions, and \$140,726 represented in-kind contributions. Please contact the OPGD Director at (202) 727-8900 for more details on the report.

District Recipient	Donor	Donation Information	Approval Date
Child and Family Services Agency	Washington Metro Area Transit Authority	CFSA will begin soliciting donations to support the FY 2004 annual Project Harvest and the holiday gift drive.	Authority to solicit the donation approved on 6-30-03
Child and Family Services Agency	Victoria Perry, Pam and Ruth Summers	An in-kind donation of 80-100 pieces of luggage valued at \$300 that will be used by children to transport belongings between placements.	Authority to accept the donation approved on 6-26-03
Commission on Arts and Humanities	G. Byron Peck	In-kind donation of paintings, sculptures, mosaics, mobiles, and murals valued at \$50,000 to be located in public places to enhance the visual environment of the District.	Authority to accept the donation approved on 6-27-03
Department of Employment Services	Children Youth Investment Trust Corporation	A partnership agreement by which Children Youth Investment Trust Corporation will seek financial donations from area business and organizations to support the DOES Summer Youth Employment Program. <i>The amount of the donation will be reported in the 4th quarter report.</i>	Authority to solicit/accept the donation approved on 6-11-03
D.C. Parks and Recreation	Modell's	An in-kind donation of equipment for the Summer Youth Basketball Camp at Kennedy Recreation Center valued at \$248.	Authority to accept the donation approved on 6-27-03
D.C. Parks and Recreation	Erwin Gudelsky	An in-kind donation of baseball equipment valued at \$3,934 to be used at various recreation centers throughout the District.	Authority to accept the donation approved on 6-27-03

District Recipient	Donor	Donation Information	Approval Date
D.C. Parks and Recreation	Bruce Adams	An in-kind donation to renovate the Simon baseball field located at Mississippi Avenue. The donation is valued at \$25,000.	Authority to accept the donation approved on 6-2-03
D.C. Parks and Recreation	Paradise Apartments	An in-kind donation of 15 Easter baskets valued at \$150 for children at the Paradise Day Care program.	Authority to accept the donation approved on 6-30-03
D.C. Parks and Recreation	Christ Our Redeemer AME Church	An in-kind 21" Apex Color TV donation valued at \$120 to benefit youth in the after school education enhancement program.	Authority to accept the donation approved on 6-30-03
D.C. Parks and Recreation	Results Gym	An in-kind donation of exercise equipment valued at \$25,000 to be used at the Kennedy Recreation Center.	Authority to accept the donation approved on 6-30-03
D.C. Parks and Recreation	Raymond Anselmo	An in-kind donation of exercise equipment valued at \$5,000 to be used at the Kennedy Recreation Center.	Authority to accept the donation approved on 6-2-03
D.C. Parks and Recreation	JBj Enterprises	An in-kind donation of 25,000 rally sticks valued at \$10,000 to be used at various Parks and Recreation special events.	Authority to accept the donation approved on 6-30-03
D.C. Parks and Recreation	Hoop it UP	A financial donation of \$765 to assist financially challenged families send their children to the Summer Youth Basketball Camp.	Authority to accept the donation approved on 7-2-03
D.C. Parks and Recreation	Senoda, Inc.	An in-kind donation of water bottles and notepads valued at \$1,500 to be used as giveaways at Parks and Recreation special events.	Authority to accept the donation approved on 6-30-03
Executive Office of the Mayor/Office of Community Outreach	Inkind: Microsoft \$2,500; Reddy Ice \$90; Snapple Beverage Group \$220; Linens of the Week \$180; Nothing But Donuts \$87; Encore Associates \$110; McDonald's \$113; Universal Donut Shop \$120; Heller's Bakery \$100; Giant Foods \$252; Safeway \$500; S&G Caterers \$225; Swartz & Sons Distributors \$140 Financial: Washington Gas and Light \$1,000; Curtis Properties \$500	An in-kind donation of \$4,637 and a financial donation of \$1,500 to support the Crime Forum II hosted by Mayor Williams on May 10, 2003.	Authority to accept the donation approved on 5-10-03
Executive Office of the Mayor/Office of Community Outreach	Okie Dokie Incorporated	An in-kind donation of \$2,541 for catering services at the Mayor's Young Professionals Roundtable on April 22, 2003.	Authority to accept the donation approved on 4-23-03
Executive Office of the Mayor/Office of Community Outreach	TBD	An in-kind and financial donation to support the celebration of the annual National Night Out program on August 5, 2003. <i>The amount of the donation will be reported in the 4th quarter report.</i>	Authority to solicit the donation authorized on 6-30-03
Executive Office of the Mayor/Office of the Deputy Mayor for Families, Children, and Elders	Amerigroup, Consumer Health Foundation, Advanta	An in-kind donation of \$5,000 to provide food and printing services for the Mayor's Health Care Summit III/Consumers Voice Forum on April 12, 2003.	Authority to accept the donation authorized on 6-30-03

District Recipient	Donor	Donation Information	Approval Date
Executive Office of the Mayor/Commission for National and Community Service	Freddie Mac Foundation	An authorization to solicit funds up to \$500,000 over three years to support specific activities to enhance the National Youth Service Day. <i>The outcome of this request will be reported in the 4th quarter report.</i>	Authority to solicit the donation authorized on 6-5-03
Executive Office of the Mayor/Office of Gay, Lesbian, Bisexual, and Transgendered Affairs	Food Bar DC	An in-kind donation of refreshments valued at \$785 to support an outreach event for leadership from the gay, black community in celebration of gay black pride month.	Authority to accept the donation authorized on 5-16-03
Executive Office of the Mayor/Office of Asian and Pacific Islander Affairs	In-kind: Lai Sim Wong Kan \$200; Tsai-Kwang \$500; New Da Hsin Trading, Inc. \$168; Minh Le \$500; Joung Sook Park \$1,000; Boogie Knights/Lab Rats \$300; KABA \$163; Mei Wah Restaurant \$200; Lei Garden \$80; SOHO \$100; Burma Restaurant \$500; Mehak Restaurant \$100; Chinatown Steering Committee \$100; Hunan Restaurant \$150; Café Asia \$500;	In-kind donations of cultural performances and refreshments valued at \$4,561 to celebrate Asian Heritage Day.	Authority to accept the donation authorized on 5-13-03
Executive Office of the Mayor/Office of Partnerships and Grants Development	Hillwood Museum and Garden	An in-kind donation of a meeting room for a one-day staff planning retreat valued at \$250.	Authority to accept the donation authorized on 6-3-03
Fire and Emergency Management Services	Medtronic Physio-Control	An in-kind donation of refreshments valued at \$1,500 for the purpose of community outreach and the Heart Safe Communities program awareness.	Authority to accept the donation authorized on 5-20-03
Office of Corporation Counsel	Arabella W. Teal	An in-kind donation of training books valued at \$150.	Authority to accept the donation authorized on 6-23-03
Office of Corporation Counsel	Anne Meglis	An in-kind donation of a printer valued at \$50.	Authority to accept the donation authorized on 6-30-03

reSTORE DC

Commercial District Technical Assistance Program

**Notice of Funding Availability
August 1, 2003 – December 15, 2003**

Consistent with activities authorized by the Community Development Act of 1975 (D.C. Code Section 6-1006.) and pursuant to Mayor's Order 99-62 (issued April 9, 1999), the Deputy Mayor for Planning and Economic Development announces a Commercial District Technical Assistance Program (CD-TAP) and issues this Notice of Funding Availability ("NOFA").

PROGRAM DESCRIPTION

The Commercial District Technical Assistance Program (CD-TAP) provides specific, discrete technical assistance and funding for projects and activities that help to revitalize neighborhood business districts. Sample projects or activities that CD-TAP could fund include, but are not limited to, the following:

- Organizing for commercial revitalization
- Financial planning
- Recruiting volunteers
- Event development and production
- Marketing, promotion and merchandising strategies and products
- Market analysis
- Design guidelines
- Business mix
- Streetscape design
- Design charrettes
- Project planning
- Mixed use development strategies
- "Clean and Safe" campaigns, services and products
- Business development assistance
- Architectural assistance
- Community initiated development training
- Strategic planning
- Establishing a Business Improvement District
- Parking and traffic analysis and management
- Evaluation and assessment

Consulting services can be provided by numerous and varied local, regional, or national specialists. If a CD-TAP applicant's request for assistance can be met by an existing technical resource offered by the District, the applicant may be referred to that agency. Alternatively, an applicant may contract with an independent contractor. Once the CD-TAP

award is made, technical assistance should be delivered within 60 to 90 days, with a project report completed within 6 months thereafter.

Program Administration

The program will be administered by the Office of the Deputy Mayor for Planning and Economic Development.

Funding

\$400,000 in matching CD-TAP funds will be available annually. Awards will range from a minimum of \$500 to a maximum of \$25,000. Small requests are especially encouraged. Awards will be made according to the following 4 categories of technical assistance, with some examples of eligible activities or projects.

- **ORGANIZATION:** Incorporation, Drafting By-Laws, Volunteer Recruitment, Staffing Plans, Capacity Building, Funding Plan Development, Community Outreach and Input, Forming Neighborhood BIDs
- **ECONOMIC RESTRUCTURING:** Market/Feasibility Studies, Developing a Marketing Plan, Project Planning, Property Development Studies, Retail Enhancement
- **DESIGN:** Urban Design, Architectural Assistance, Signs, Safety and Security
- **PROMOTION:** Advertising, Special Events, Retail Merchandising, Merchant Directory

Funding Match Requirements

Applicants will be required to match every \$2 of CD-TAP funding with \$1 toward the project cost. No match is required for the award of technical assistance chosen from the list of organizational development consulting services (see attachment). Eligible match sources include private and non-District public funds (e.g., federal). In-kind contributions are not an eligible match.

Eligible Applicants

Any non-profit organization, excluding designated DC Main Streets districts, operating in the District of Columbia whose goals include the economic revitalization of neighborhood business district(s) may apply to CD-TAP. No single organization will be awarded more than \$50,000 per fiscal year and each neighborhood business district is limited to \$50,000 in aggregate annual funding from the CD-TAP program. A non-profit corporation may submit an application on behalf of an unincorporated group and serve as the fiduciary agent for the group. However, in this instance, the applicant must clearly outline project responsibilities; the applicant will be held accountable for achieving

project outcomes. Unincorporated groups are still eligible to receive technical assistance in the form of advisory services, training, and workshops, but not in the form of a direct cash grant. An example of an unincorporated group receiving technical assistance is "how to get organized and incorporate."

Organizations with projects or activities in areas eligible to receive federal Community Development Block Grant funding are encouraged to consult the District's Department of Housing and Community Development (Neighborhood Development Assistance Program).

Ineligible Applicants

Designated local programs of DC Main Streets are ineligible for CD-TAP, although applications from other organizations are encouraged if proposing a project or activity that is supported by a designated local Main Street program. Individual businesses are also ineligible for CD-TAP.

Application Procedures

Applicant organizations are encouraged to submit applications for CD-TAP throughout the NOFA period, and will be notified concerning the outcome of their application within one month of submission. Applications should be mailed or delivered any time prior to 5 PM on December 15, 2003, to *reSTORE DC*, 441 4th Street, NW, Suite 1140 N, Washington, DC, 20001. Applicants are required to complete a standard grant application developed by the Washington Regional Association of Grantmakers. For more information, and to download the application guidelines, please refer to: http://www.washingtongrantmakers.org/WG/GM_Resources/Format/Format_Index.asp.

Applicant organizations should be certain to identify the following:

1. Needs to be addressed;
2. Amount of funding requested;
3. Service provider (if identified);
4. Type and scope of services to be funded (including consultant proposal);
5. Description of any previous attempts to address the need (including working with other D.C. agencies);
6. Expected benefit of the consulting assistance, including objectives of the service to be provided;
7. Description of strategy to implement the resulting plan or recommendations;
8. Program budget;
9. Proof of non-profit status;
10. IRS Form W9 (Request for Taxpayer Identification Number);
11. Letters of Support;
12. Letter of Intent to comply with applicable District Laws including, but not limited to, First Source Hiring, LSDBE procurement, and Apprenticeship Program; and
13. Financial report of applicant organization.

14. Applications will be internally reviewed by the Commercial Revitalization Task Force. The Task Force will be comprised of not fewer than 3 representatives from the following agencies and private programs:

Deputy Mayor for Planning and Economic Development
Department of Housing and Community Development
Office of Planning
District Department of Transportation
Department of Banking and Financial Institutions
D.C. Marketing Center
Georgia Avenue Business Resource Center
Clean City Program

Additional comments may be sought from staff of the Office of Planning (including neighborhood planners and/or the project manager for Revitalization Planning) and/or Neighborhood Service Coordinators in the Office of the City Administrator and Neighborhood Outreach Coordinators in the Mayor's Office of Public Advocate.

Evaluation Criteria

CD-TAP applications will be evaluated according to the following:

- Information provided in the application
- Financial need
- Economic conditions
- Likelihood of implementation following funding
- Benefit to the commercial district and neighborhood

Applications will be scored according to the evaluation criteria. Applications that receive the highest scores will be selected to receive funding. Funding awards may be conditional upon the applicant completing a task or action related to the project. For example, if the review committee determines that the scope of the project is too complex to be addressed as described in the application, funding could be awarded for a portion of the technical assistance. Or, if the request for funding is not supported by a key neighborhood stakeholder, the award could be conditional upon demonstration of support from that key individual or organization.

Disbursement of Funds

CD-TAP funds will be disbursed in one of three ways:

1. Grant funds will be awarded to the applicant non-profit organization, which will contract with a consultant for the approved project scope; or
2. DMPED will contract directly with a consultant for two thirds of the project fee and the applicant will contract with the consultant for one third of the project fee. A single Memorandum of Agreement ("MOA") could serve as the contract.

3. DMPED will contract with the consultant for the entire project fee when the services delivered are part of the organizational development consulting services available from CD-TAP.

Awards of \$2,500 or less may be awarded without competitive bid; awards of between \$2,500 and \$15,000 may be awarded with minimum 3 verbal bids; awards of between \$15,000 and \$25,000 may be awarded with minimum 3 written bids.

Awards of \$10,000 or less may be made in one disbursement. Awards between \$10,000 and \$25,000 may be disbursed in multiple payments.

Reporting Requirements

The applicant organization will be held accountable for project implementation. Therefore, recipients will be required to document and report the demonstrated results of the consulting services. Reports must be delivered no more than six months after the date of delivery of the technical assistance. Grantees are subject to audit.

reSTORE DC**Commercial District Technical Assistance Program****Organizational Development Consulting Services
Available Through CD-TAP**

The National Main Street Center, in cooperation with the District of Columbia's *reSTORE* DC program, will provide a variety of organizational development consulting services under the District's Commercial District Technical Assistance program (CD-TAP). As organizations apply for CD-TAP funds to organize for commercial revitalization, the National Main Street Center would provide them with the technical assistance necessary to achieve the following objectives:

- acquaint neighborhood organizations with the Main Street Four-Point Approach™;
- evaluate local organizational capacity to implement a revitalization program;
- provide specific advice and recommendations regarding organizational structure;
- assist with developing a broad base of volunteers;
- training in the Main Street Four Point Approach™; and
- identify sources of funding for revitalization and fund-raising methods.

The following services would assist non-Main Street neighborhood commercial districts with developing or increasing their organization's capacity to apply for DC Main Streets and to implement a successful Main Street program. These services would be delivered as directed by *reSTORE* DC staff.

Main Street Assessment

The NMSC will work with non-Main Street commercial districts to conduct a Main Street Assessment as directed by *reSTORE* DC staff. The objectives of the Main Street Assessment are as follows:

- To identify some of the commercial district's major problems, opportunities, and needs;
- To provide community members with information about the Main Street Four-Point Approach;
- To determine whether or not the Main Street Four-Point Approach is an appropriate strategy for the commercial district's revitalization; and
- To recommend a realistic, achievable course of commercial district revitalization action for the short term.

The Assessment is conducted by two members of the NMSC technical services staff and is available in a two-day and three-day format. Prior to the on-site portion of the service, staff conduct demographic and other research about the neighborhood.

While on site, staff tour the commercial district, hold meetings and interviews with a variety of public and private constituents, make an informational presentation about the Main Street Four-Point Approach, formulate recommendations, and make a verbal presentation of preliminary findings. Following the on-site portion of the service, the commercial district will receive either a detailed written report of findings or a follow-up on-site consultation related to the Assessment findings and recommendations. The Main Street Assessment is ideal for commercial districts and organizations that have some previous experience with commercial revitalization but are unfamiliar with the Main Street Four-Point Approach and/or are not implementing a comprehensive scope of revitalization activities.

“Organizing for Main Street” Consulting Package

This comprehensive scope of organizational development services will assist non-Main Street neighborhoods that want to prepare themselves to participate in DC Main Streets. The National Main Street Center proposes to deliver up to 100 hours of consultation to a neighborhood organization (whether structured as an incorporated entity or unincorporated group). The package of consulting services would include the following components.

- Initial Main Street presentation
- Consultation on appropriate organizational structure and identification of key constituents
- Board development consultation/training
- Committee development- training and/or consultation in establishing committees, recruiting volunteers, and defining roles/responsibilities
- Development of a realistic action plan for the organization to implement prior to application for DC Main Streets
- Identification of appropriate funding sources
- Telephone/on-site consultation to address questions and other organizational issues

This service is appropriate for neighborhoods with little or no previous commercial revitalization activity. Up to 100 hours per neighborhood are allocated for delivery of this package. Package components can be adjusted according to the needs and circumstances of recipient neighborhoods. As appropriate, written reports and documents will be delivered. The NMSC would negotiate with *reSTORE* DC staff to develop a final scope of work for each recipient.

Main Street 101 Training

The National Main Street Center will organize and present a two-day workshop that covers the fundamentals of the Main Street Four Point Approach™ as developed by the National Main Street Center. This highly interactive workshop will provide a one-half day of training on each of the following points: (1) Organization, (2) Design, (3) Promotions and (4) Economic Restructuring. It will provide the participants with guidance on roles and responsibilities, suggested projects, and “next steps.” This training can be delivered either to an individual non-Main Street neighborhood or to a

group of non-Main Street districts. Content is altered from the standard Main Street 101 to address the needs of this specific audience. Two NMSC staff will organize and present the seminar. The NMSC will provide copies of the required training materials for all participants.

Abbreviated On-Site Four Point Training

As an alternative to the two-day Main Street 101 training, the National Main Street Center will organize and present a two to three hour training programs on each of the Main Street's Four Points. Each of the four training modules will cover revitalization activities of that point, project ideas, and implementation strategies. This abbreviated training would be presented to non-Main Street commercial districts that desire a general introduction to the Main Street Four-Point Approach. Depending on the neighborhood's needs, the NMSC will deliver training on one or more of the Four Points. Training would be conducted by one member of the NMSC's professional staff; all training materials will be provided.

"Fund-Raising for Main Street" Seminar

The National Main Street Center will organize and present a one-day seminar on fund-raising for Main Street. Seminar content will include sources and uses of funds, methods for raising money, strategies for linking projects to income, project case studies, and hands-on "how-to" exercises. This seminar can be delivered to a single non-Main Street neighborhood or to a group of non-Main Street districts. Training would be conducted by one member of the NMSC's professional staff; all training materials will be provided.

Main Street Fund-Raising Consultation

The NMSC will organize and deliver a two-day on-site consulting service designed to develop a fund-raising plan for commercial revitalization projects in non-Main Street neighborhoods. This service is appropriate for organizations just beginning revitalization activities or those that have been previously active. The service will be provided by NMSC staff and a specialized consultant. Both will work with neighborhood representatives to identify funding needs and sources of funds, develop strategies for raising funds from those sources, and to train local representatives in fund-raising formats and methods. At the conclusion of the consultation, the neighborhood will receive a written report that documents findings and recommendations.

"Recruiting Volunteers to Main Street" Seminar

The National Main Street Center will organize and present a one-day seminar on how to recruit and retain volunteers for Main Street. Seminar content will include sources and uses of volunteers, methods for recruitment, training, and retention, strategies for matching projects to projects, "best practices" examples, and hands-on "how-to" exercises. This seminar can be delivered to a single non-Main Street neighborhood or to a group of non-Main Street districts. Training would be conducted by one member of the NMSC's professional staff; all training materials will be provided.

Main Street Volunteer Recruitment Consultation

The NMSC will organize and deliver a two-day on-site consulting service designed to develop a volunteer recruitment and retention plan for commercial district revitalization activities in non-Main Street neighborhoods. This service is appropriate for organizations just beginning revitalization activities or those that have been previously active. The service will be provided by two members of the NMSC professional staff. Both will work with neighborhood representatives to critique current volunteer development systems, and to identify volunteer needs, sources of individual and organizational volunteers, strategies for recruiting volunteers, and methods of training and rewarding volunteers. That information will be compiled into a written volunteer development plan for the organization/neighborhood.

Local Program Memberships

The National Main Street Center offers the National Main Street Network, a membership program that offers local Main Street programs a variety of benefits. Benefits include an annual subscription to *Main Street News*, access to the Members Only section of the NMSC website, discounts on publications and conferences, access to the Information Exchange (an on-demand research service), and access to the Main Street Network email list-serve. At the direction of *reSTORE* DC staff, the NMSC will provide neighborhood organizations or individuals with a one-year Network membership. Cost per membership is \$195 per year.

reSTORE DC

Commercial Property Acquisition and Development Program

**Notice of Funding Availability
August 1, 2003 – December 15, 2003**

Consistent with activities authorized by the Community Development Act of 1975 (D.C. Code Section 6-1006.) and pursuant to Mayor's Order 99-62 (issued April 9, 1999), the Deputy Mayor for Planning and Economic Development announces a ***Commercial Property Acquisition and Development Program*** ("CP-A&D") and issues this Notice of Funding Availability ("NOFA").

PROGRAM DESCRIPTION

The *Commercial Property Acquisition and Development Program* will provide matching grant funds for non-profit corporations to acquire, redevelop or build commercial properties located within the District of Columbia. Alternatively, the non-profit corporation could strategically invest the matching grant funds to retain, expand or attract a desirable retail business to commercial property in their neighborhood.

CP-A&D is designed to foster local ownership and facilitate the improvement of commercial properties throughout the District. CP-A&D funds are available to pay the capital costs of a variety of activities related to the acquisition and development of commercial properties, including:

- Site preparation
- Environmental remediation
- Site acquisition
- Site development
- Streetscape and infrastructure improvements
- Leasehold improvements

Applicants will be required either to attend training in how to develop commercial property or to demonstrate organizational proficiency and experience in commercial property development. If a CP-A&D applicant's request for funding can be met by an existing resource offered by the District, the applicant may be referred to that agency.

Program Administration

The program will be administered by the Office of the Deputy Mayor for Planning and Economic Development.

Total Funds Available

Up to \$5 million in matching grants will be available for CP-A&D in Fiscal Year 2004. Awards will range from a minimum of \$25,000 to a maximum of \$250,000, and require a

match of 2:1 (i.e., \$2 must be raised privately for every \$1 contributed by the District). Eligible match sources include private and non-District public funds (e.g., federal). Match sources must be "in-hand" or pledged at the time of application. CP-A&D funding may be conditionally awarded based on obtaining funding commitments from other sources. Matching grant funds will be disbursed at settlement when all revenues are released from escrow.

Eligible Applicants

Any non-profit corporation operating in the District of Columbia, including areas designated as local DC Main Street programs, and whose goals include the economic revitalization of a neighborhood business district(s), may apply for a grant. A non-profit corporation may make application on behalf of an unincorporated group and serve as the fiduciary agent for the group. However, in this instance, the applicant must clearly outline project responsibilities; the applicant will be held accountable for achieving project outcomes. Unincorporated groups are still eligible to receive funding in the form of advisory services, training, and workshops, but not in the form of a direct cash outlay or cash grant.

Ineligible Applicants

Individual businesses are ineligible for a CP-A&D grant, except as sub-recipients of a grant awarded to an eligible recipient according to an approved grant agreement. For example, the capital costs of a for-profit business could be subsidized by an approved project, activity or program funded by a CP-A&D grant to a non-profit corporation.

Area of Program Interest

Retention, expansion and attraction of retail stores are the priorities for CP-A&D funding. For FY 2003, CP-A&D encourages applicant organizations to apply for funding to assist projects that, in addition to street-level retail uses, also utilize the upper floors of commercial buildings for housing or service-related businesses. Occupying upper floors will provide the project with another source of revenue and help to "populate" the commercial corridor. Projects that offer expansion opportunities for existing retailers are also encouraged.

Applying for a Grant*Applications due prior to December 31st, 2003*

Applications should be mailed or delivered any time prior to 5 PM on December 15, 2003, to reSTORE DC, 441 4th Street, NW, Suite 1140 N, Washington, DC, 20001. Applications should be submitted in the form of one UNBOUND proposal.

Application Procedures

Applications will be reviewed as they are received prior to the NOFA deadline. Applicants are required to complete a standard grant application developed by the Washington Regional Association of Grantmakers. This standard grant application should form the basis of the CP-A&D application. For more information, and to

download the application guidelines, please refer to:

http://www.washingtongrantmakers.org/WG/GM_Resources/Format/Format_Index.asp.

Additional forms for project evaluation are available from *reSTORE* DC. Please contact David Toland at (202) 727-5209 or david.toland@dc.gov and request the appropriate forms for CP-A&D.

Applicant organizations should be certain to identify the following:

1. Property name and address, including Ward and Square/Lot numbers;
2. Proposed design for property (include photos or renderings, if possible);
3. Name and contact information of the property's current owner;
4. Name and contact information of the development company and project architect, if known;
5. Provide a list of relevant projects with which the applicant organization had primary involvement and describe the organization's role.
6. Name and contact information of the proposed development team, if known;
7. Amount of funding requested and amount of match provided¹;
8. Description/brief history of property and surrounding area (include photos if possible);
9. Description of the proposed project to be funded and why it should be funded;
10. Description of any previous attempts to address the proposed site (including working with other D.C. agencies);
11. Identify any relationship between the developer and any person working for, appointed to a position in, or elected to an office of the District of Columbia Government, an instrumentality of the District of Columbia, or any other entity from which there may be even an appearance of conflict of interest;
12. Expected benefit to the neighborhood, including mention of appropriate coordination with a local Main Street program to ensure proposed acquisition or development fits in with an approved commercial revitalization strategy²;
13. Proposed "Sources and Uses of Funds" statement for development financing, as well as proposed project budget (income/expense statement) for rehab or new construction³;
14. Plan for owning/operating property once work is complete, how property will be managed;
15. Proof of non-profit status;
16. Letters of Support;

¹ The applicant organization should provide information about all sources of funding to determine the "gap" to be closed by CP-A&D, which should encourage private investment at a reasonable rate-of-return. The "gap" should be as small as possible in order to maximize CP-A&D funds.

² The proposed project should conform with the approved commercial revitalization strategy for the neighborhood, employ District residents, and generate retail sales tax revenue.

³ Contact *reSTORE* DC (david.toland@dc.gov or 727-5209) for special forms.

17. Letter of Intent to comply with applicable District Laws including, but not limited to, First Source Hiring, LSDBE procurement, compliance with tax liabilities and Apprenticeship Program; and
18. Financial report of applicant organization (i.e., recent independent audit, copy of Form 990, etc.).

Projects will undergo a review of design appropriateness according to specific design guidelines provided by the Office of Planning, and should comply with the Secretary of the Interior's Standards for Rehabilitation.

Applications will be internally reviewed by the Commercial Revitalization Task Force. The Task Force will be comprised of representatives from the following agencies and private programs:

1. Deputy Mayor for Planning and Economic Development
2. Department of Housing and Community Development
3. Office of Planning
4. District Department Of Transportation
5. Department of Banking and Financial Institutions
6. National Main Street Center
7. D.C. Marketing Center
8. Georgia Avenue Business Resource Center
9. Clean City Program

Additional comments may be sought from staff of the Office of Planning (including neighborhood planners and/or the project manager for Revitalization Planning) and/or Neighborhood Service Coordinators in the Office of the City Administrator and Neighborhood Outreach Coordinators in the Mayor's Office of Public Advocate.

Evaluation Criteria

CP-A&D applications will be evaluated according to the following:

- Information provided in the application (30 points)
- Financial need (10 points)
- Economic conditions, including internal rate of return to private investors (10 points)
- Likelihood of implementation following funding (20 points)
- Benefit to the commercial district and neighborhood (30 points)

Applications will be scored a maximum of 100 points according to the evaluation criteria. Applications that receive the highest scores will be recommended for funding and reviewed by the Deputy Mayor for Planning and Economic Development. Funding awards may be conditional upon the applicant completing a task or action related to the project. For example, if the review committee determines that the scope of the project is too complex to be addressed as described in the application, funding could be awarded for a portion of the acquisition and development. Or, if the request for funding is not

supported by a key neighborhood stakeholder, the award could be conditional upon demonstration of support from that key individual or organization. CP-A&D funding may be conditionally awarded based on obtaining funding commitments from other sources. Also, the Applicant Organization must have some form of contract of sale or agreement (i.e. option to purchase), which may be contingent upon award of grant(s); for construction grants, the applicant should have accurate cost estimates for redevelopment/construction costs.

Disbursement of Funds

Grants will be disbursed according to an approved grant agreement between the Deputy Mayor and the grant recipient organization.

Reporting Requirements

The applicant organization will be held accountable for project implementation. Therefore, recipients will be required to document and report the use of funds. Reports must be delivered no more than ten (10) months after the date of delivery of the funding, and upon the completion of the project.

Presentation Package*For consideration by the District of Columbia*

- I. Project description
 - A. Narrative
 - B. Visual
- II. Impact on District
 - A. Tax revenues
 - B. Sales from building
 - C. Construction jobs
 - 1. Number
 - 2. Payroll
 - D. Permanent jobs
 - 1. Number
 - 2. Payroll
- III. Effect on surrounding properties/target area
- IV. Impact on others
 - A. Customers
 - B. Target area workers and residents
 - C. Special groups
- V. Nature of GAP
- VI. Proposed public participation
 - A. Nature
 - B. Amount
 - C. Leverage ratio/subsidy ratio
 - D. Link public participation with amount of GAP
- VII. Bibliography of studies, etc.
- VIII. Addenda

reSTORE DC: Preliminary Pro Forma Analysis		FORM A-10B:
Stabilized Year Operating Statement		
Property:		
Date of Projection:		
Gross Scheduled Income		
Less Vacancy (_ %)		
Plus: Misc. Income		
Effective Gross Income		0
Less: Fixed Expenses		
Real Estate Taxes		
Insurance		
Other		
Less: Variable Expenses		
Management (_ %)	0	
Utilities		
Repair and Maintenance		
Water, Sewer, Garbage		
Supplies		
Outside Services		
Misc.		
Less: Replacement Reserves		
Roof		
Floor Covering		
Other		
Total Expenses		0
Net Operating Income		0
Less: Debt Service		
Cash Flow		0

Vacancy Rate (%)=5

Management Fee (%)=0

reSTORE DC: How Much Can I Spend?		FORM A-11A	
I Know What The Rents Will Be;			
How Much Can I Spend On Rehabilitation (Construction)?			
+, -, X, ÷, =			
	Gross Scheduled Rents		
-	Vacancy	0	
+	Miscellaneous Income	0	
=	Effective Gross Income		0
-	Fixed Expenses	0	
-	Variable Expenses		
-	Replacement Reserves		
=	Net Operating Income		0
÷	Debt Coverage Ratio		
=	Available For Debt Service		#DIV/0!
÷	Debt Service Constant		
=	Maximum Mortgage Amount		#DIV/0!
-	Existing Mortgage Payoff		
+	Equity Dollars Available		
-	Acquisition Cost		
=	Maximum Construction or Rehabilitation Budget		#DIV/0!

	Estimated Total	
	Construction/Rehabilitation Costs	0
-	Maximum Rehabilitation Budget	#DIV/0!
=	Amount of Gap in Project Costs	#DIV/0!
÷	Building Size	
=	Cost Gap per Square Foot	#DIV/0!

reSTORE DC: How Much Can I Spend?		FORM A-12:
Uses of Funds		
Pre-acquisition/Payoff Costs		
Acquisition		
Construction/Rehabilitation		
Holding Costs During Construction		
Rent-Up Costs	0	
Other Costs		
Total Uses of Funds		0

Sources of Funds		
Intervention Funds		
Building/Land Contribution		
Donated Services		
Debt--		
1st Mortgage		
2nd Mortgage		
3rd Mortgage		
Equity		
1st Position		
2nd Position		
3rd Position		
4th Position		
Other Sources		
Other Sources		
Other Sources		
Total Sources of Funds		0

Notes:



SECRETARY OF THE
DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE
OFFICE OF THE SECRETARY
OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001

Final Decision

Appeal of: Howard Bray
Matter No: 380944
Date: July 22, 2003

Arnold R. Finlayson, Esq., Director, Office of Documents and Administrative Issuances, participated in the preparation of this decision.

INTRODUCTION

The above-captioned matter is before the Secretary of the District of Columbia for a final decision on Mr. Howard Bray's formal administrative appeal to Mayor Anthony A. Williams pursuant to section 207(a) of the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a) (2001).¹

Mr. Bray (hereinafter the "appellant") contends that the Office of Planning and Economic Development ("OPED" or

¹ Pursuant to Mayor's Order 97-177, dated October 9, 1997, the Secretary of the District of Columbia was delegated the authority vested in the Mayor to render final decisions on appeals under the D.C.-FOIA.

the "agency") improperly withheld from disclosure to him information responsive to his request for "documents related to the proposed mayor's mansion . . . and . . . the efforts of the Casey Mansion Foundation to obtain adjacent Whitehaven Parkway." Appeal letter dated May 5, 2003 from H. Bray to the Hon. Anthony A. Williams.

BACKGROUND

The Casey Mansion Foundation was established "to provide the people of the District of Columbia [with] an official residence for the perpetual use of Mayors. . . ." Letter dated February 26, 2001 from Ms. E. B. Casey to The Honorable Anthony A. Williams. With the aforesaid purpose in mind, the Eugene B. Casey Foundation ("Casey Foundation") purchased a 17-acre tract of land on Foxhall Road in the Northwest quadrant of Washington, D.C.

The Casey Mansion Committee, a community organization not affiliated with the Casey Foundation or the Casey Mansion Foundation, was formed by the Foxhall Community Citizens Association for the purpose of assessing what impact on the community would result from a proposed transfer of an additional four acre tract of land from the National Park Service ("NPS") to the Casey Mansion Foundation for the mayoral mansion.

The appellant is a member of the Foxhall Community

Citizens Association and he opposes the Casey Foundation's plan to acquire the four acre parcel of NPS-owned land to expand the property for the mayoral mansion to 21 acres.

The record on appeal before the Office of the Secretary indicates that, on January 15, 2003, the appellant "filed under the District's Freedom of Information Act a request for all District documents related to the proposed mayor's mansion at 1801 Foxhall Road and documents related to efforts of the Casey Mansion Foundation to obtain adjacent Whitehaven Parkway." Appeal letter from H. Bray to Hon. Anthony A. Williams.

In response to the appellant's D.C.-FOIA request, OPED conducted a search of its records and was able to discover one responsive document which the agency provided to him.

Dissatisfied with OPED's response to his D.C.-FOIA request, the appellant sought administrative review by filing a formal appeal with the Mayor of the District of Columbia. In his appeal letter, the appellant states that the one document that was provided by OPED was not within the scope of his D.C.-FOIA request and contends that responsive documents which exist were not provided to him.

A discussion which sets forth the legal standards for evaluating the reasonableness of a public body's response to a requester under the D.C.-FOIA is provided below.

DISCUSSION

"It has been and continues to be the policy of the District Government to increase and improve access that . . . citizens have to [the District] Government's information." Mayor's Memorandum 2000-5, dated August 25, 2000. The D.C.-FOIA "provides for a statutory right of access to government information, including information about the operations and policies of government." Id. In order to ensure accountability for carrying out the broad disclosure mandate, the D.C.-FOIA was amended in 2001 to make it patently clear that "[a]ll employees of the District government are responsible for compliance with [its] provisions and this requirement shall be incorporated in section 1803 [entitled, Responsibilities of Employees] of the District of Columbia Personnel Regulations." Section 206(e) of D.C. Law 13-283, the "Freedom of Information Amendment Act of 2000."

In the instant matter, the appellant challenges the adequacy of OPED's search for documents within the scope of his D.C.-FOIA request and contends that although responsive documents exist, none of them were provided to him by the agency.

As a preliminary matter, there does not appear to be any binding case precedent from the D.C. Court of Appeals

which addresses whether a person has any rights to a review or an appeal when a District agency has determined that it has either provided all responsive documents or has no responsive documents in response to a D.C.-FOIA request and notified such person of its determination. However, binding D.C. Court of Appeals case precedent instructs that under circumstances where, as here, a "statute is borrowed extensively from a federal statute, as the D.C.-FOIA was from the federal Freedom of Information Act . . . the decisions of the (federal) court of last resort are normally adopted with the statute." Donahue v. Thomas, 618 A.2d 601, 602 n. 3 (D.C. 1992) (quoting Lenaetts v. District of Columbia Dep't of Employment Services, 545 A.2d 1234, 1238 n.9 (D.C. 1988)). Accordingly, "except where the two acts differ, . . . case law interpreting the federal FOIA [is] instructive authority with respect to our own Act." Washington Post v. Minority Business Opportunity Commission, 560 A.2d 517, 521 n.5 (D.C. 1989).

It appears to be a well settled principle of federal administrative law and procedure that a federal "FOIA requester, dissatisfied with the agency's response that no records have been found, may . . . challenge the adequacy of the agency's search" under the appeal provisions of the federal FOIA. Oglesby v. United States Department of the

Army, 920 F.2d 57, 67 (D.C. Cir. 1990); accord Valencia-Lucena v. United States Coast Guard, FOIA/PA, 180 F.3d 321, 326 (D.C. Cir. 1999). The legal standard for evaluating a federal agency's "claim of compliance with [federal] FOIA disclosure obligations" is well established in federal case law as well. Weisberg v. U.S. Department of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984). In this regard, the federal courts have consistently held that in order to meet its burden that it has complied with its obligations to disclose under the federal FOIA, an "agency must demonstrate that it has conducted a 'search reasonably calculated to uncover all relevant documents.'" Weisberg, supra, at Id. (quoting Weisberg v. Department of Justice, 705 F.2d 1344, 1350-51 (D.C. Cir. 1983); see Valencia-Lucena v. United States Coast Guard, FOIA/PA, 180 F.3d 321, 325 (D.C. Cir. 1999) ("An agency fulfils its obligations under FOIA if it can demonstrate beyond material doubt that its search was 'reasonably calculated to uncover all relevant documents'" (citations omitted). Significantly, in determining whether an agency has satisfied its records disclosure duties and responsibilities under the federal FOIA, "the issue to be resolved is not whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents

was adequate." Id. "In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith." Id. An affidavit is "reasonably detailed" if it sets "forth the search terms and the type of search performed, and avers that all files likely to contain responsive materials (if such records exist) were searched." Oglesby, supra, 920 F.2d at 68; see Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982) ("affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice to demonstrate compliance with the obligations imposed by the FOIA"); Trans Union, LLC v. Federal Trade Commission, 141 F.Supp.2d 62, 67 (D.D.C. 2001).

Although the standards enunciated in the federal FOIA cases cited above apply to the consideration of motions for summary judgment under Rule 56 of the Federal Rules of Civil Procedure, this office is of the opinion that the aforesaid legal principles are likewise germane to a proper determination as to whether D.C.-FOIA appeals should be subject to summary disposition via final decision at the administrative agency level.

Based on the record evidence, the Office of the Secretary is unable to determine whether OPED's search for responsive records was adequate under the circumstances.

Therefore, it is necessary to remand this appeal to OPED to provide additional information pertaining to the adequacy and reasonableness of its search for the records sought by the appellant pursuant to his D.C.-FOIA request.

Accordingly, the instant appeal is remanded to OPED with instructions for that agency to submit a reasonably detailed affidavit, attested to by OPED's FOIA officer or other cognizant officials and employees, within seven (7) working days of the receipt of this final decision, which describes (1) the scope and method of the search that was conducted, (2) what search terms were used if an automated search was performed, (3) what documents and files were examined or inspected if a manual search was performed, and (4) what offices and employees were consulted. The affidavit shall also aver that, to the best of the affiant's knowledge and belief, all files in the possession, custody or control of OPED which were likely to contain responsive documents were searched and that the agency's search did not result in the discovery of any records that were within the scope of the subject D.C.-FOIA request, if applicable.

DECISION ON APPEAL

For all the foregoing reasons, the matter is remanded to OPED for the submission of additional information to

supplement the record consistent with the specific instructions provided above.

OPED is further directed to file an affidavit or, if more than one person is involved in the decision-making process, the affidavits required by this decision with the Office of the Secretary of the District of Columbia within seven (7) working days of the receipt of the copy of this decision, and provide a courtesy copy to the appellant and the General Counsel to the Mayor.

OPED is further instructed to submit a written certification to the Mayor of the District of Columbia that the agency has complied with all of the requirements of this final decision or any reasons as to why the agency was not able to comply.

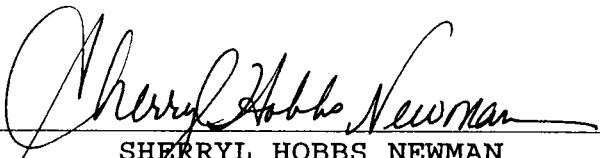
To the extent that OPED on remand determines that additional documents exist which are responsive to the appellant's D.C.-FOIA request that relate to this appeal, OPED is instructed to comply with the following directives:

OPED is directed to provide its written response to the Office of the Secretary, with a courtesy copy to the appellant, within seven (7) working days of the date of this decision which comports with the following:

1. When a requested record has been identified and is available, the agency shall notify the requester as to where and when the record is available for inspection or copies will be available. The notification shall advise the requester of applicable fees.
2. A response denying a written request for a record shall be in writing and shall include the following information:
 - (a) The identity of each person responsible for the denial;
 - (b) A reference to the specific exemption or exemptions authorizing the withholding of the record with a brief explanation of how each exemption applies to the record withheld and a statement of the public interest considerations which establish the need for withholding the record. Where more than one record has been requested and is being withheld, the foregoing information shall be provided for each record withheld;
 - (c) After deletion of any reasonably segregable portion of a public record which may be withheld from disclosure, justification shall be explained fully in writing and the extent of the deletion shall be indicated on the record which is made available, unless that indication would harm an interest protected by any exemption under the D.C.-FOIA. If technically feasible, the extent of the deletion and the specific exemptions shall be indicated at the place in the record where the deletion was made;

- (d) If a requested record cannot be located from the information supplied or is known to have been destroyed or otherwise disposed of, the appellant shall be so notified; and
- (e) A statement of the appeal rights provided by the Act.

This constitutes the final decision of the Secretary of the District of Columbia on this appeal.


SHERRYL HOBBS NEWMAN
SECRETARY OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 02-17**Case No. 02-17****(Consolidated Planned Unit Development and Related
Zoning Map Amendment for 5401 Western Avenue, N.W.)
May 12, 2003**

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings on November 14, 2002; December 12, 2002; and December 16, 2002, to consider an application from 5401 Western Avenue Associates, LLP and the Abraham and Louise Lisner Home for Aged Women for consolidated review and one-step approval of a planned unit development ("PUD") and a related Zoning Map amendment (the "Application"). The Commission considered the Application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the Application subject to conditions.

FINDINGS OF FACT**The Application, Parties, and Hearing**

1. On March 22, 2002, Stonebridge Associates 5401, LLC, on behalf of 5401 Western Avenue Associates, LLP and the Abraham and Louise Lisner Home for Aged Women (the "Lisner Home"), the owners of the subject property (collectively, the "Applicant") filed the Application for consolidated review and approval of a PUD and related Zoning Map amendment. The subject property is located at the intersection of Western Avenue, N.W. and Military Road, N.W. and consists of Lot 805 and a portion of Lot 7 in Square 1663 (the "Site"). Lot 805 is currently developed with the Washington Clinic (the "Washington Clinic Land"), and the portion of Lot 7 included in the Site is currently part of the western edge of the grounds of the Lisner Home (the "Lisner Land").
2. The Commission determined the parties to the case at the November 14, 2002, public hearing. Parties in this case were the Applicant; Advisory Neighborhood Commission ("ANC") 3E, the ANC within which the Site is located; and, in opposition to the Application, the Friendship Heights Organization for Reasonable Development ("FHORD"), Hazel Rebold, Steve and Betsey Kuhn, Jackie Braitman, Martin Rojas, and ANC 3/4G. The Commission denied party status to the Chevy Chase Plaza Children's Center (the "Children's Center"), stating that the Children's Center was part of the Applicant's case. The Commission also denied party status to the Chevy Chase Citizen's Association, finding that the request did not meet the requirements for party status.

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3. A revised notice was published in the *D.C. Register* on October 4, 2002. On October 9, 2002, the Applicant posted signs with the revised publication notice. On October 14, 2002, the Applicant posted two additional revised publication notices. From that date, the Applicant asserted that the signs were maintained and replaced as required.
4. At the November 14, 2002, public hearing, FHORD objected to the posted notice, arguing that notice was required on both the Washington Clinic Land and the Lisner Land. By submission made December 5, 2002, FHORD asserted that notice was not properly given because the PUD affects two parcels, but the Application and notices referencing 5401 Western Avenue obscured the fact that a portion of the Lisner Land was also involved, and that the posted notice could lead a passerby to believe that only the Washington Clinic Land was involved. FHORD argued that notice also should have been posted on the Lisner Home building. The Applicant, in a submission also made December 5, 2002, contended that notice was posted in compliance with §§ 3015.4 and 3015.5 of the Zoning Regulations. The Applicant submitted an Affidavit of Posting (Exhibit 63) showing that the Applicant posted one sign on the property at the 5400 block of Military Road and Western Avenue, N.W. and another sign at 5401 Western Avenue, N.W. at the entrance to the Washington Clinic on the wall surrounding the clinic building. The signs used, verbatim, the language of the notice as published by the Zoning Commission in the *D.C. Register*. The Applicant asserted that the posting complied with the requirements and was completed at least 40 days before the public hearing. The Applicant also submitted Affidavits of Maintenance (Exhibits 139 and 140) stating that the signs were maintained weekly and replaced when necessary.
5. The Applicant also asserted that, even if the provided notice was insufficient, FHORD and other members of the community had actual notice of the PUD proposal, and that actual notice is sufficient to cure any technical violation of the notice requirements. According to the Applicant, FHORD and other members of the community were aware of the proposal, in part because the Applicant began working with the community seven (7) months before the Application was filed and continued to engage the community since then. ANC 3E considered the proposal at its monthly meetings in September and October 2002, as well as at a special meeting on November 7, 2002. ANC 3/4G considered the proposed development at its monthly meeting in October 2002. The public hearing date on the PUD proposal was announced at each ANC meeting. The record contains numerous letters both in support and in opposition to the project from members of the community, and the public hearing was attended by a significant number of community members.
6. The Applicant also argued that the notice issue was now moot. At its November 14, 2002, hearing, the Commission commenced the public hearing process, permitting only the Applicant's presentation and then publicly continued the hearing to Thursday, December 12, 2002. According to the Applicant, all parties and persons involved had

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complete legal and actual notice at least 60 days in advance of the upcoming hearing and, thus, there was no prejudice to any party.

7. The subject property does not include the Lisner Home building, and the Applicant was not required to post notice on that building. In addition, the Applicant properly posted notice on the subject property, and that the parties in opposition received actual notice of the hearing. The issue of whether notice was properly posted for the PUD is now moot by virtue of actual notice and participation at the public hearing by the parties and persons in support and in opposition.
8. The public hearing on the Application was held on November 14, December 12, and December 16, 2002. In addition to testimony and evidence presented by the parties and government agencies, the Commission heard testimony and received letters both from persons in support of the proposed PUD and from persons in opposition to the Application.
9. The Children's Center testified at the December 16, 2002, hearing and made written submissions in support of the project. Executive Director Lisa Danahy testified that the Children's Center, a non-profit corporation, was established in 1989 as an amenity in a PUD approved in Zoning Commission Order No. 519. The Children's Center is located one block from the proposed PUD and will expand its operation in the space provided as part of the PUD application. Ms. Danahy testified that the Children's Center is a community-based organization that serves the immediate neighborhood; eighty-seven percent (87%) of the current families live or work in Ward 3 and fifty-eight percent (58%) of those families are within ANC 3E. For three years, the Children's Center attempted to secure space for expansion and was unable to do so because of economic conditions and lack of available space.
10. The Commission also heard testimony in support of the project from Chris McNamara, the single-member district representative for ANC 3E02, and Frank Gordon, the single-member district representative for ANC 3E05. Mr. Gordon testified that the project, as ultimately revised, is an excellent plan, representing smart growth with appropriate density at a transit hub in a commercial center. He found the community amenity and benefits package to be substantial and endorsed the Applicant's actively seeking community input, which improved the plan.
11. Sam Black, the chair of the recognition jury of the Smart Growth Alliance, testified on behalf of the Smart Growth Alliance, which includes the Chesapeake Bay Foundation, the Coalition for Smarter Growth, the Greater Washington Board of Trade, the Washington Builders Council, and the Urban Land Institute. According to Mr. Black, the Smart Growth Alliance jury recognized this project as smart growth, because the proposed PUD is appropriate for a dense, mixed-use neighborhood and will contribute to a mixture of uses and to a walkable, transit-oriented community, citing especially the

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public green space and affordable housing components of the project. Cheryl Cort, representing the Washington Regional Network for Livable Communities ("WRN") and testifying on behalf of the Coalition for Smarter Growth, of which WRN is a member, stated that the project would add well-designed housing close to the Friendship Heights Metrorail station and commercial corridor while respecting the scale of the surrounding neighborhood. Ms. Cort also testified that her organizations are very supportive of the proposal to add five percent (5%) of affordable housing.

12. Several community residents testified in support of the project. Tad Baldwin supported the project because it represents smart growth, is environmentally sound, increases the tax base of the city, and incorporates affordable housing. Matthew Tobriner, president of the board of the Lisner Home, testified in support of the project as the closest neighbor. Caren Bohan strongly supported the project because it would create additional housing in the District near public transit and incorporate a much-needed day care center. Allison Barnard Feeney praised the proposed amenities and benefits offered by the Applicant, which she stated would exceed any cost to the immediate neighborhood created by the additional height over that permitted as a matter-of-right. Ms. Feeney concluded that the project should be approved, because it represents a cooperative effort between the neighborhood and the Applicant and provides solutions for problems of import to the neighborhood.
13. The Commission also received letters and heard testimony from community residents opposed to the project. Margaret Mellon stated that the project was too large for the Site and that a matter-of-right development should be considered. Ann Jansen expressed concern about possible damage to her home. Dr. Anthony Furano objected to the Applicant's proposal to balance a five percent (5%) increase in height and density with a five percent (5%) of affordable housing, stating that the exchange was not good precedent for establishing affordable housing in the District. Joel Hunter stated concerns about traffic and asked the Commission to defer its decision until after completion of the Military Road-Missouri Avenue Crosstown Traffic Study and the Upper Wisconsin Commercial Corridor Study.
14. At its public meeting on March 10, 2003, the Commission requested the submission of certain additional materials. At its April 14, 2003, meeting, the Zoning Commission took proposed action by a vote of 5-0-0 to approve, subject to conditions, the Application and plans presented at the public hearing.
15. The proposed action was referred to the National Capital Planning Commission ("NCP") under the terms of the District of Columbia Home Rule Act. NCP, by action dated May 1, 2003, found that the proposed consolidated PUD and related rezoning would neither adversely affect the identified federal interests nor be inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

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16. The Zoning Commission took final action to approve the Application on May 12, 2003, by a vote of 5-0-0.

The Site and Surrounding Area

17. The subject property consists of Lot 805 and a portion of Lot 7 in Square 1663. Lot 805 is developed with a three-story building with basement, used as the Washington Clinic for the past fifty (50) years. The included portion of Lot 7 is currently part of the grounds of the Lisner Home, a residence for the elderly.
18. The Site is situated in Ward 3 at the intersection of Western Avenue and Military Road, N.W. and has a land area of approximately 58,840 square feet (43,840 square feet on Lot 805 and 15,000 square feet on Lot 7). Its triangular configuration extends east of the intersection approximately 370 feet along Western Avenue and 428 feet along Military Road. An interior lot line boundary is shared along the east side of the Site with the Lisner Home, which is approximately thirty (30) feet high. The Site slopes down from its eastern boundary to the low point at the intersection of the streets. The change in elevation is roughly equal to one (1) floor.
19. The Site is located in Friendship Heights, approximately 250 feet from the entrance to the four-portal Friendship Heights Metrorail and Metrobus stations. The Site is surrounded by commercial, retail, and residential development. The character of the area reflects the height, density, and use expected at a major node on a major commercial corridor, which includes the Mazza Gallerie Shopping Center, Chevy Chase Pavilion, Friendship Center, and Chevy Chase Plaza.
20. The Site is neither a designated historic landmark nor is it within a historic district.
21. Square 1661, which is south of the Site immediately across Military Road, is zoned C-3-B and R-5-D but has been developed with mixed-use developments approved through the PUD process. Whereas the maximum zoning height is one hundred (100) feet, Square 1661 contains townhouses in the eastern portion with a maximum height of forty-five (45) feet. Further to the southwest of the Site is Mazza Gallerie, which is zoned C-3-A and has a maximum height of sixty (60) feet and a floor area ratio ("FAR") of 3.0. To the north, immediately across Western Avenue in Montgomery County, Maryland, is a commercial office building with a height of 143 feet and density of 4.0 FAR. Adjacent to the office building is the Chevy Chase Center, which has been approved for redevelopment including a 300,000squarefoot, 90-foothigh mixed-use building. These properties, and those further to the north and northwest, are within Montgomery County, Maryland.

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22. Residential developments within the R-2 District are located to the east and southeast of the Site. No detached single-family residence immediately confronts the above-grade portions of the Site; the closest detached single-family residence is more than 240 feet away from the building on the south side of Military Road.

Existing and Proposed Zoning

23. The Washington Clinic Land (Lot 805) is zoned R-5-B, and the Lisner Land (the portion of Lot 7) is zoned R-2. The Application originally requested rezoning of the entire Site to R-5-D but was subsequently modified to seek a PUD-related map amendment to R-5-C for the Washington Clinic Land only, with no change to the existing R-2 zoning for the Lisner Land.
24. The Site and areas to the east and southeast were zoned R-2 in 1958. The Washington Clinic Land was rezoned to R-5-B in 1974, when the Friendship Heights Metrorail station was planned but not yet constructed. Neither the Washington Clinic Land nor Lot 7 has been rezoned since 1974.
25. The R-2 District includes those areas that have been developed with one-family, semi-detached dwellings, and permits a maximum height of forty (40) feet, with a limit of three (3) stories. The Zoning Regulations do not prescribe a maximum FAR in the R-2 District; however, the maximum lot occupancy for all structures, except churches or public schools, is forty percent (40%). A PUD in the R-2 District may have a maximum height of forty (40) feet and a maximum density of 0.4 FAR devoted entirely to residential use.
26. The R-5 Districts are designed to permit a flexibility of design by permitting in a single district all types of urban residential development that conform to the height, density, and area requirements established for each district. The R-5-B District permits moderate height and density, including a maximum height of fifty (50) feet, with no limit on the number of stories, and a maximum density of 1.8 FAR. An apartment house in the R-5-B District is permitted as a matter-of-right, and parking is required at a rate of one (1) space for each two (2) dwelling units. A PUD in the R-5-B District may have a maximum height of sixty (60) feet, with no limit on the number of stories, and a maximum density of 3.0 FAR devoted entirely to residential use.
27. The R-5-C District permits medium height and density, including a maximum height of sixty (60) feet, with no limit on the number of stories, and a maximum density of 3.0 FAR. An apartment house in the R-5-C District is permitted as a matter-of-right, and parking is required at a rate of one (1) space for each three (3) dwelling units. A PUD in the R-5-C District may have a maximum height of seventy-five (75) feet, with no limit on the number of stories, and a maximum density of 4.0 FAR devoted entirely to residential use.

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28. In support of its proposed PUD-related map amendment, the Applicant asserted that the analysis underlying the 1974 zoning map amendment was now outdated and has been overtaken by changes in the area, especially the modal split associated with the Friendship Heights Metrorail station. The Applicant presented testimony and evidence that the requested zoning change would be consistent with the purposes and objectives of zoning as set forth in the Zoning Act, D.C. Official Code § 6-641.01 (2001). According to Steve Sher, the Applicant's land planning expert, the appropriate zoning would place the highest residential density on the Site without creating adverse impacts. The Applicant contended that the project would not create adverse impacts on the nearby community but would reflect the same pattern of density and juxtaposition of height in the area, while also respecting the specific site context and overall community. Roger Lewis, the Applicant's expert in architecture and urban planning, testified that the proposed intensity on the Site was appropriate smart growth; that is, walkable, transit-oriented development that encourages denser, mixed-use development in areas well served by existing infrastructure and, specifically, along transit corridors.
29. The parties in opposition argued that the R-5-B zoning should be maintained on Lot 805. The opposition presented expert testimony about the 1974 rezoning from George H. Oberlander, AICP, who concluded that the Site's close proximity to Metro and the few additional housing units that might be created by the Applicant's requested zoning change were outweighed by the need to protect the existing well-established single-family housing near the Site on the east and south. Mr. Oberlander testified that the intent of the existing zoning appropriately balances the higher density commercial development on Wisconsin Avenue and the surrounding low-density neighborhoods.
30. For reasons discussed below, the Commission finds that the requested PUD-related Zoning Map Amendment of Lot 805 from R-5-B to R-5-C is appropriate, consistent with the purposes of the Zoning Act, and not inconsistent with the Comprehensive Plan. The Commission is not persuaded by the parties in opposition that the 1974 zoning designation should be maintained on Lot 805, but concludes that the PUD-related Zoning Map Amendment is appropriate considering the proximity of the Site to public transit and the scale of commercial development in the vicinity. In doing so, the Commission does not find that the existing underlying zoning is invalid, but that the PUD-related zoning is appropriate given the controls placed on the project through this Order.
31. The parties in opposition argued that the Commission should maintain the defined transition zone between the commercial and high-density area and the nearby low-density residential area, noting concerns about the future rezoning and redevelopment of the Lisner Home's property. The Applicant's expert in land use testified that the R-5-C zoning on the Washington Clinic Land adjacent to the R-2 zoning on the Lisner Land would create an appropriate transition zone in light of the District's planning policies and goals.

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32. The Office of Planning ("OP") testified that, in a regional commercial center, medium-density residential zoning is part of a transition and buffer for nearby lower-density residential developments, where the transition zone is maintained by the zoning pattern of commercial to medium-density residential to a lower-density residential. OP stated that R-5-C zoning is medium-density residential, and concluded that the R-5-C zone designation on the Washington Clinic Land adjacent to the R-2 zoning on the Lisner Land and nearby Lisner Home property, also zoned R-2, is the appropriate place for the transition boundary in light of the Comprehensive Plan and the District's planning policies and goals, including transit-oriented development and increased District residency. OP concluded that the project's planned half-acre of open space would provide an ideal buffer and transition space. OP also testified that it would recommend retention of R-2 zoning on the Lisner Home property as a transition zone as small area planning continued for the Friendship Heights area.
33. The Commission credits OP's conclusions and finds that R-5-C zoning on the Washington Clinic Land, adjacent to R-2 zoning on the Lisner Land, will maintain a transition zone appropriate for the area. The Commission makes no findings with respect to any potential redevelopment of the Lisner Home property, but reiterates its conclusion in *Tenley Park LLC* (Zoning Commission Order No. 921, Case No. 00-03C, September 17, 2001; *see* Conclusion of Law No. 13, 48 *D.C. Reg.* 10524-10525) that "a map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments."

The PUD Project

34. The Applicant originally proposed to construct a for-rent apartment house with a maximum of 225 units and approximately 7,200 square feet of ground-floor retail fronting on and accessed from Western Avenue, with a density of 4.1 FAR (the "Original Proposal"; Exhibits 1-6). The maximum height of the Original Proposal was ninety (90) feet along Western Avenue, with the height of the eastern portion stepping down to fifty-two (52) feet, eight (8) inches, and ultimately to forty-two (42) feet, eight (8) inches at the southeast corner facing Military Road at 43rd Street. Between 218 and 250 parking spaces were proposed in a three-level, below-grade parking garage, with access to the parking garage and loading docks provided from Western Avenue. A primary lobby entrance along with a lay-by were proposed for access from Military Road.
35. On August 19, 2002, the Applicant filed a modified proposal that revised the Original Proposal in response to continuing work with the community and OP (the "Modified Proposal"; Exhibits 33, 33A, and 33B). Major changes made in the Modified Proposal included: (a) reductions in the number of apartments from 200-225 units to 185-215 units and in total density from 4.1 FAR to less than 4.0 FAR; (b) design modifications to eliminate the building wing closest to the single-family neighborhood to the east and to preserve all existing mature trees on the area formerly designated as a play area; (c) an

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increase, from 110 to 180 feet, in the setback from the closest single-family residence; (d) elimination of the proposed ground-floor retail use; (e) allocation of 3,000 square feet to the Children's Center; and (f) the addition of a transportation management plan and off-site road improvements to improve the existing traffic situation in the Friendship Heights area. The changes were intended to lessen the impact of the development on the nearby residential community and to make it more compatible with the surrounding area.

36. The Applicant continued to work with ANC 3E, community representatives, and OP. In response to comments and negotiations, the Applicant further modified the scope and design of the project in its supplemental prehearing submission filed on October 25, 2002, in accordance with § 3013.8 of the Zoning Regulations (Exhibits 79 and 79A; the "Supplemental Prehearing Submission").
37. The Supplemental Prehearing Submission proposes a smaller project, including a reduction in density of more than twenty percent (20%), a reduction in height by two (2) stories, and a reorganization of the massing and site placement to reduce impacts on the community. Specifically, the Applicant proposes the construction of a for-sale apartment house with a maximum of 125 units (the "Project") that includes space for use as a child care facility (the "Day Care Center").
38. The Project will orient the entire mass of the building toward Western Avenue, with a ground level plus seven (7) stories and a maximum height of 78.75 feet. The Project design consists of a single bar along Western Avenue, with density of 4.15 FAR based on the Washington Clinic Land only and a gross floor area of approximately 182,000 square feet. The total density calculated on the entire Site is 3.14 FAR.
39. The proposed building will be curved at the intersection of Western Avenue and Military Road across from the Chevy Chase Pavilion to create a street presence on Military Road. The density of the Project is focused along the Western Avenue frontage, away from the low-rise residential development that exists to the east and southeast along Military Road. The building will be set back approximately 240 feet from the nearest detached single-family dwelling and approximately 170 feet from the nearby townhouses. The building footprint will be parallel to the Western Avenue property line, and the short exposure of the residential "bar" will front onto Military Road.
40. The massing of the Project will be articulated with setbacks, bay windows, balconies, and trellis elements. A distinct massing form and entrance canopies will mark residential lobby entrances, and a curved façade will frame the publicly-accessible green lawn. The landscaped southeast "green" will open up to public space along Military Road. The green space, representing approximately 24,700 square feet (more than a half-acre) of open space, will provide a buffer to the residential neighborhood to the east and create an attractive passive recreation area. A hardscape path will connect the planned vehicular lay-by and the public sidewalk along Military Road to the entrance of the residential

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lobby. The residential building's lobby will extend through the building at its western edge, providing pedestrian access at both Western Avenue and Military Road.

41. The primary exterior facing material for the Project will be red brick. Several different shades will be used to render the Project's distinct massing elements. Painted aluminum window systems will be incorporated throughout. Cast stone or concrete horizontal trim will articulate some floor levels, copings, and window openings, and painted trellis-work will add detailing to the façade.
42. The Project will include a two-level, below-grade parking garage accessed from Western Avenue. The Applicant will provide at least 1.1 parking spaces per dwelling unit plus four (4) parking spaces for the Day Care Center; eight (8) visitor parking spaces will be provided in a surface lot adjacent to the Day Care Center. Ingress and egress to the garage will be aligned with the signalized intersection at Western Avenue and Wisconsin Circle in a configuration designed to enhance operational efficiency and safety at the Site by improving sight distances, reducing driver uncertainties, and minimizing east-west conflicts. The garage will also provide a number of bicycle parking spaces equal to at least twenty percent (20%) of the total number of dwelling units.
43. The Project will provide one 12-foot by 55-foot loading berth, with a 200 square foot loading platform, and one 10-foot by 20-foot service delivery space. The loading facilities will be located in the northeast corner of the residential building.
44. The Project will provide pedestrian access across the Site via a pedestrian path along the eastern side connecting Military Road to Western Avenue. The path will be framed by light poles and low retaining walls, and will provide a shortcut between the residential areas on the south side of Military Road and shopping and public transportation destinations located north of Western Avenue.
45. The planned Day Care Center was designed to minimize the visual impact of the structure and to blend in with the existing Lisner Home (Exhibit 212). The proposed one-story structure will be cut into the existing slope of the ground. The enclosing walls were designed to mimic the form and articulation of the existing retaining walls around the adjacent Lisner Home patio, and the brick color, size, texture, and pattern will match that used for the Lisner Home.
46. By reports dated November 4, 7, and 14, 2002, (final report at Exhibit 146) and through testimony presented at the public hearings, OP recommended approval of the Application with certain conditions, including the inclusion of affordable housing units in the Project and the provision of transportation and construction management plans. OP strongly recommended approval of the Application, noting that development of the proposed condominiums, at a density greater than would be allowed under matter-of-right zoning, was consistent with the Comprehensive Plan. OP testified that the Project would achieve

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an unusually high level of public benefits for a residential PUD without significant negative impacts on the surrounding neighborhood. In concluding that the Application was consistent with the Comprehensive Plan and met the requirements and standards of Chapter 24 of the Zoning Regulations, OP commented favorably on the location and size of the new residential development; the inclusion of affordable housing in a market-rate project; the opportunities for home-ownership, including the affordable units; the inclusion of a day-care center; and the planned buffer of landscaped open space between the proposed development and nearby single-family residences.

47. Hazel Rebold, the owner of the detached single-family house closest to the Site, asserted that the Project would adversely impact her dwelling and other single-family dwellings nearby. Through a series of photographs (Exhibit 200), Ms. Rebold testified that the Project would be out of scale and character with the existing neighborhood.
48. Shalom Baranes, the Applicant's expert in architecture, testified regarding the significant green space planned along the southern edge of the Project and the height of the residential building. The absolute elevation of the Project, as finally modified, would be 400.75 feet above sea level as a result of the reduction in height to 78.75 feet – an elevation almost identical to the cornice line of the adjacent Embassy Suites hotel, which is at an elevation of 400.1 feet but approximately sixteen (16) feet below the top of the mansard roof line. The Project's height would also be significantly below the cornice line of the nearby office building at Chevy Chase Pavilion facing the single-family residential neighborhood, which is at an elevation of 423.1 feet and thirty-seven (37) feet less than the office building's mansard roof line.
49. The Applicant also testified that the Project would not cast a shadow on any residential property or affect the light or air of any existing or approved development, but would appropriately transition between the established lower-density residential neighborhoods to the high-density, still developing commercial and multi-family residential node of Friendship Heights. Mr. Lewis testified that the Project's height, geometry, and multiple façade treatments would harmonize and be in scale with nearby structures and abutting properties, and its configuration would preserve significant usable, south-facing, landscaped open space. Mr. Sher testified that the only property abutting the Site is devoted to institutional use, with all other properties being separated by at least a 90-footwide street. Mr. Sher also testified that the use, height, and density are all compatible with the surrounding area, noting that the residential building and Day Care Center would replace medical offices, where the closest uses to the north and south are hotel, office, and retail uses; the existing buildings to the south and north of the Project are higher than the proposed PUD, which would be substantially removed from the nearest single-family dwellings; and that the proposed density is lower than that of existing and approved commercial projects to the south and west, equivalent to the density to the north, and greater than, but removed from, the single-family neighborhood to the east.

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50. OP concluded the Project's height would modulate between the taller development to the northwest and southwest of the Site and the closest single-family dwellings, with the proposed open space providing a buffer from the more intense development at the core of Friendship Heights than would some other alternatives.
51. The Commission concurs with the Applicant's testimony and evidence as well as OP's conclusions. The height of the Project building, as finally modified by the Applicant, will create an appropriate transition between the nearby lower-density residential neighborhood and higher-density commercial area. The height and density of the Project are appropriate for the area and will not have an adverse impact on the adjacent areas.

Development Incentives and Flexibility

52. The Applicant requests the following areas of flexibility from R-5-C requirements and PUD standards:
- a. Approval of a day care center in the R-2 District otherwise requiring Board of Zoning Adjustment approval pursuant to § 205 of the Zoning Regulations;
 - b. Approval of a 13.75-foot increase in the height of the building over that permitted as a matter-of-right in the R-5-C District, including five percent (5%) as permitted by § 2405.3, for a total height of 78.75 feet; and
 - c. Approval of an increase in residential gross floor area of 1.15 FAR over that permitted as a matter-of-right in the R-5-C District, including five percent (5%) as permitted by § 2405.3, for a total density of 4.15 FAR for the residential building on the Washington Clinic Land only.

Public Benefits and Project Amenities

53. The following benefits and amenities will be created as a result of the PUD project:
- a. *Housing.* The Project constitutes a new residential development in a designated Housing Opportunity Area and will provide residential space beyond that permitted as a matter-of-right under the existing zoning.
 - b. *Affordable Housing.* The Project will devote five percent (5%) of the square footage over that permitted as a matter-of-right (that is, 5,514 gross square feet, or four [4] to six [6] units) to affordable housing for households that earn no more than the low-income limit allowed by the U.S. Department of Housing and Urban Development for the Section 8 program. The continued availability of affordable housing in the Project will be monitored by OP and the D.C. Department of Housing and Community Development.

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- c. *Day Care Center.* The Project will provide a separate building of approximately 3,000 square feet for use as a day care center with a maximum total enrollment of forty-four (44) children. The Applicant will lease the space for fifty (50) years, with a rent not to exceed \$1.00 annually, to the Children's Center.
- d. *Urban Design and Architecture.* The density of the Project will be oriented toward Western Avenue, approximately 240 feet from the nearest detached single-family residence, so as to minimize any adverse impacts on the adjacent community resulting from the Project's height. The Project will incorporate a paved, landscaped walkway from Military Road to Western Avenue to provide safe, lighted access for the public between the residential and commercial areas.
- e. *Open Space and Landscaping.* The Project will provide more open space than is required under the proposed R-5-C or the existing R-5-B zoning. An expanse of green space in the southern and eastern portions of the Site will encompass approximately 24,700 square feet devoted to trees, shrubs, and groundcover. The Project will also retain existing mature trees on the Site and enhance the existing streetscape with landscaping improvements on Western Avenue and within the 15-foot building line setback along Military Road as well as a wider sidewalk along Military Road.
- f. *Transportation Features.* The Applicant proposed a transportation management plan incorporating measures to encourage a reduction in passenger car trips, increase transit use, and promote successful transit-oriented development.
- g. *Traffic and Safety Improvements.* The Applicant proposed to work with the District Department of Transportation ("DDOT") to implement improvements along 43rd Street, Military Road, and Western Avenue to improve traffic operational and safety conditions in the neighborhood.
- h. *Parking.* To meet demand and prevent spillover parking on neighborhood streets, the Project will provide at least 1.1 parking spaces per dwelling unit and four (4) parking spaces for the Day Care Center. Eight (8) spaces for visitor parking will be reserved in a surface lot for drop-off and pick-up activities at the Day Care Center during specified times in the morning and afternoon.
- i. *Improvements to Chevy Chase Park.* The Applicant will contribute \$75,000 for improvements to the Chevy Chase Park, located near the Site, in cooperation with the Friends of Chevy Chase Park (the "Friends"), a volunteer-based group coordinating community efforts to improve and maintain this highly used facility. The Applicant's contribution is intended for two (2) major upgrades identified by the Friends for the park: a track around an existing ball field and enhancements to the playground area.

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- j. *Construction Management Plan.* The Applicant proposed a construction management plan intended to minimize potential adverse impacts resulting from the construction of the Project.
54. For the reasons discussed below, the Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities including the creation and preservation of open space; efficient and economical land utilization; transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts; affordable housing; preservation of open space and trees; and uses of special value to the neighborhood and to the District of Columbia as a whole.

Contested Issues

Housing

55. The Applicant noted that § 2403.9(f) of the Zoning Regulations identifies housing as an amenity without differentiating on the basis of whether the same number of housing units could be provided under matter-of-right zoning. The Applicant asserted that the Commission has previously considered housing an amenity for PUDs in Residence Zones, citing ZC Order No. 831 (3133 Connecticut Avenue, N.W. – The Kennedy-Warren); ZC Order No. 870 (7th and G Streets, S.W.); and ZC Order No. 945 (EYA Development Inc., Bryan School). The Applicant noted further that the R-5-B zone permits a range of institutional uses, including a medical clinic, hospital, museum, and church, so that residential development is not guaranteed.
56. OP noted that the Project would provide more housing units than are permitted under the matter-of-right zoning, and that these units would be within a housing opportunity area and a regional center adjacent to a Metrorail station.
57. The parties in opposition argued that housing cannot be considered an element of the Applicant's Community Amenity and Benefits Package because housing can be provided as part of a development under the matter-of-right standards.
58. The Commission finds that the provision of housing above that permitted as a matter-of-right in the existing zone district, particularly in a housing opportunity area, is a public benefit in accordance with § 2403.6 of the Zoning Regulations.

Affordable Housing

59. The Applicant proffered the inclusion of some affordable housing units within the Project as a public benefit and project amenity. Specifically, the Applicant committed to devote five percent (5%) of the increased square footage over that permitted as a matter-of-right

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to affordable housing for households that earn no more than the low-income limit allowed by the U.S. Department of Housing and Urban Development for the Section 8 program. The commitment will result in 5,514 square feet of the Project being devoted to affordable housing, or approximately four (4) to six (6) units, depending upon their configuration and size.

60. The Applicant asserted that the inclusion of affordable housing in the Project would further important goals of the Comprehensive Plan and the housing opportunity area, noting that the Project would not simply contribute to a fund for construction of affordable housing elsewhere but will provide affordable housing in Ward 3 – an area in significant need of affordable housing.
61. OP described the proposed affordable housing as a clear public benefit, and concluded that the projected four (4) to six (6) affordable housing units were an excellent start considering the Project's size and nature. OP indicated that the continued availability of affordable housing in the Project will be monitored by OP and the D.C. Department of Housing and Community Development ("DHCD"), which committed to conduct appropriate monitoring of the affordable housing component of the Project on behalf of OP. OP stated that the Applicant's refinements to its affordable housing program were consistent with the approach and enforcement mechanisms to which OP and DHCD are committed.
62. The parties in opposition argued that the affordable housing proffer did not constitute an amenity because the Applicant's submission was not sufficiently specific about the operation of the program, including certification of eligibility, selection of buyers, and restrictions on sale of affordable units. In response, the Applicant submitted a revised, more detailed statement after considerable work with OP and DHCD. The statement sets forth specific details as to the size and configuration of the units, the initial unit price, the certification of eligibility, the selection of buyers, and the restrictions on sale of the affordable units (Exhibit 212). The Applicant subsequently revised the enforcement mechanisms for its proposed affordable housing program to include the participation of District agencies (Exhibit 223).
63. The opposition also argued that the affordable housing proffer did not constitute an amenity because the proposal was an "inefficient" means of providing affordable housing by devoting larger, more expensive units to affordable housing. In response, the Applicant noted that the affordable units were offered after significant work with OP and DHCD, and that the proposed PUD is apparently the first residential project to include an affordable housing component in furtherance of the Ward 3 Element of the Comprehensive Plan, which identifies affordable housing as an important public amenity.
64. The Commission concurs with the Applicant and OP that the inclusion of affordable housing in the Project is an important public benefit, consistent with goals of the

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Comprehensive Plan and the Ward 3 Element. The Commission finds that the Applicant's proposal, as revised, is an appropriate and enforceable means to preserve the long-term viability of the affordable housing units included in the Project.

Day Care Center

65. The Applicant proposed to allocate approximately 3,000 square feet of space, in a one-story building separate from the residential building, for use as a day care center with a maximum total enrollment of forty-four (44) children. The Applicant plans to lease the space for fifty (50) years, with a rent not to exceed \$1.00 annually, to the Children's Center, allowing the center to more than double its capacity. The Children's Center is a not-for-profit organization created as a public amenity for the Chevy Chase Plaza PUD to provide space for a community-based day care facility. The Applicant indicated an intent to target the services of the Day Care Center to benefit the surrounding community.
66. The parties in opposition argued that the Day Care Center did not constitute a public benefit or project amenity, because it had significant costs but little value. They asserted that there was no guarantee that the Day Care Center would benefit the community and that the Day Care Center would not constitute "affordable" day care. The opposition also argued that in providing the Day Care Center, the Applicant would permanently eliminate the potential residential development of 15,000 square feet of land zoned R-2 in the housing opportunity area.
67. The Commission concurs with the Applicant that the Day Care Center constitutes a public benefit and project amenity, and that the Zoning Regulations do not require the provision of "affordable" or subsidized day care. As proposed by the Applicant, the Day Care Center is an appropriate use to be provided on the Site, particularly with its emphasis on serving families who live or work in the vicinity, in accordance with Condition No. 5.

Tree Preservation

68. The Applicant's initial modification of the proposed PUD redesigned the footprint of the building and its underground parking facilities to save twelve (12) existing mature trees on the southeastern portion of the Site. After the Project was modified further, the Site was redrawn so that six (6) of the trees were no longer within the boundaries of the Site. The parties in opposition argued that, as a result of the boundary change, tree preservation no longer constitutes an amenity to the community.
69. The Applicant noted that the Project would still retain the six (6) mature trees within the boundaries of the Site and will not disturb the other six (6) trees no longer on the Site. The Applicant also testified that the Project would retain ten (10) existing trees along

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Western Avenue and Military Road, and would add significant new landscape improvements that would also benefit the community.

70. OP concurred with the Applicant, finding that the preservation of the existing mature trees clearly constituted a project amenity that would not be possible without the flexibility provided by the PUD process. OP testified that development under the matter-of-right zoning would likely result in the destruction of most, if not all, trees on the Lisner Land and on portions of the Washington Clinic Land.
71. The Commission finds that the Project will retain at least six (6) mature trees within the boundaries of the Site, and that the retention of these trees constitutes a public benefit and project amenity.

Open Space

72. The Applicant testified that the Washington Clinic Land includes a large surface parking lot covering much of the eastern portion. As proposed, the Project will replace the parking lot with a green space with landscaping, pedestrian paths, and a central meeting area. The green space will be approximately 24,700 square feet in size.
73. OP testified that the proposed open space will be a valuable amenity and an important public benefit, noting that, with the height and bulk of the Project shifted toward Western Avenue approximately 240 feet from the nearest single-family residence, the Project will include an open space buffer first envisioned in the 1974 sector plan.
74. The parties in opposition argued that, because there is currently no building constructed on the southeast portion of the Site where the Applicant proposed open green space, the Commission should not consider the open space as an amenity.
75. The Commission finds that the Project's provision of open green space is a public benefit and project amenity in accordance with § 2403.9(a) of the Zoning Regulations, and therefore adopts Condition No. 9.

Traffic

76. Cullen Elias, of O.R. George & Associates, the Applicant's expert in traffic engineering and transportation planning, testified that the road network serving the Project currently operates at acceptable levels of service and will continue to do so upon build-out of the Project, factoring in planned projects for the area and including a twopercent (2%) annual growth rate to account for reasonable growth. Mr. Elias testified that the Project will generate fifteen percent (15%) fewer peak-hour trips than what the existing improvements generate, and concluded that the Project will not adversely affect adjacent properties.

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77. The parties in opposition countered that the Applicant's traffic analysis was flawed and that in fact the Project would create unacceptable traffic impacts on the neighborhood, including an increase in congestion and more traffic on neighborhood streets. Joe Mehra, P.E., an expert in traffic engineering and transportation planning testifying on behalf of the parties in opposition, challenged the Applicant's traffic data and analysis (Exhibit 198). Mr. Mehra raised issues pertaining to the timing and location of traffic counts, the trip generation rates used to assess the Project and surrounding developments, projections of future traffic, the appropriate model for traffic analysis, and alleged operational and safety deficiencies at the entrances to the garage, Day Care Center, and loading area of the Project.
78. By reports dated October 8, 2002; November 13, 2002; and January 2, 2003, and through testimony at the December 12, 2002, public hearing, DDOT supported the Application. DDOT concluded that vehicular traffic generated by the Project could be accommodated with little or no negative impacts on the area road network, and that the proposed parking was adequate to service the Project and minimize parking spillover into the neighboring residential area.
79. DDOT initially recommended against the Applicant's proposed design for access to the garage and loading facility. The Applicant then revised its proposal by creating one (1) entranceway for residents and a separate entranceway to be used for access to the loading area, and indicated that deliveries would be scheduled at non-rush hour times so as not to interfere with the flow of visitors to the parking lot or with parents dropping off children at the Day Care Center. DDOT found these design modifications acceptable.
80. Colleen Smith and Kenneth Laden testified on behalf of DDOT at the December 12, 2002, public hearing. Ms. Smith concluded that the Project will have no significant impact with regard to capacity and levels of service at the critical intersections of Western Avenue at Wisconsin Avenue and Military Road at Western Avenue. Mr. Laden testified that the Applicant's proposed transportation management plan was consistent with what DDOT would recommend.
81. In response to the Commission's request for DDOT review of 2002 Census data regarding commuting patterns to work, in order to determine whether any communities had approximately fifty percent (50%) or more of the commuters using transit, DDOT concluded that nine communities had this transit rate. DDOT also stated that a fifty percent (50%) transit modal split was a reasonable estimate for a condominium project close to a Metrorail station and several major bus lines and within walking distance of office and retail developments, consistent with a transit use analysis conducted by the Metropolitan Washington Council of Governments for another residential development project in Friendship Heights.

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82. By memorandum dated January 2, 2003, DDOT reaffirmed its earlier finding that the Project would not have an unacceptable impact on traffic in the vicinity and could be accommodated with little or no negative impact on the area road network. DDOT stated that the Project would generate approximately fifteen percent (15%) fewer morning and evening peak-hour trips than the existing Washington Clinic use. Further, DDOT was not persuaded by contentions raised by Joe Mehra, traffic expert for FHORD, citing differences in methods of measuring and projecting traffic conditions. The Applicant's traffic expert also responded to issues raised by Mr. Mehra, concluding that his criticisms were without merit (Exhibit 212).
83. The parties in opposition also argued that the Commission should not move forward on the Application until certain traffic and transportation studies, currently underway, were completed. DDOT noted that the following studies are now being conducted: a transportation study for Military Road and Missouri Avenue, a transportation study in Friendship Heights, and a transportation study for McKinley Avenue. DDOT advised that the Commission need not wait for the results of the studies before considering the proposed PUD, and indicated that, to the extent a study is applicable, the approved PUD would be included in future analyses.
84. The Commission credits the testimony of DDOT and the Applicant's traffic expert and finds that the Project will not have an unacceptable impact on traffic conditions in the surrounding area, and that any adverse impacts will be mitigated through the Applicant's proposed mitigation measures, including the transportation management plan and provision of bicycle racks in the garage. The Commission also concurs with DDOT that consideration of the Application should not be delayed pending completion of on-going traffic studies, particularly since the Project can be incorporated into the studies.
85. The Applicant's traffic expert completed a study identifying possible improvements intended to mitigate existing traffic operational and safety conditions on 43rd Street, Military Road, and Western Avenue, although not necessary to mitigate traffic resulting from the proposed development. The Applicant proposed to work with DDOT to refine and implement the proposed improvements.
86. DDOT testified that the Project would have no adverse impacts on the area even without the proposed improvements. According to DDOT, the peak-hour traffic generated from the Project would be less than that generated by the existing Washington Clinic use, and DDOT indicated that it had no objections or concerns regarding safety related to the Project.
87. OP testified that, because the proposed improvements were not required to shield the neighborhood from adverse traffic impacts created by the Project, the proposed transportation enhancements constituted project amenities rather than mitigation

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measures. OP also stated that any pedestrian safety enhancements would constitute legitimate project amenities.

88. The parties in opposition argued that modifications to traffic and pedestrian patterns in the area proposed by the Applicant did not constitute an amenity because such improvements served only to mitigate traffic impacts created by the Project. The opposition also argued that the configuration of the Project would result in safety hazards.
89. The Commission concurs with OP that the Applicant's proposed improvements, which target existing traffic conditions, are not required to mitigate adverse traffic impacts created by the Project and therefore constitute a public benefit of the proposed PUD. Moreover, the Commission notes that "measures to mitigate adverse traffic impacts" is identified as a public benefit and project amenity in 11 DCMR § 2403.9(c).

Parking

90. The Project will provide at least 1.1 parking spaces per residential unit (a maximum of 138 spaces for 125 units) plus four (4) spaces for the Day Care Center. All parking will be provided in a two-level, below-grade garage, with the exception of eight (8) spaces for visitor parking located in a surface lot adjacent to the Day Care Center. The visitor parking spaces will be reserved for vehicles dropping off and picking up children at the Day Care Center during specified times in the morning and afternoon. The Zoning Regulations generally require one (1) parking space for every three (3) dwelling units and four (4) spaces for Day Care Center use.
91. The Applicant asserted that the provision of residential parking above the one-space-per-unit ratio constituted an amenity and benefit of the proposed PUD, noting the community's concern that parking from the Project would spill over into the neighborhood. The Applicant's traffic expert presented evidence that market demand for parking was less than 1.0 space per unit, while Douglas Firstenberg of Stonebridge Associates, Inc., an expert in real estate development, testified that the appropriate range of parking for this type of development was 0.5 to 1.0 spaces per unit. The Applicant's architect testified that the Project could accommodate 1.1 parking spaces per unit, even with the maximum number of units proposed.
92. OP described parking as an amenity, noting that provision of a high parking ratio would help satisfy neighbors that there would be no parking spillover into the adjacent residential community. However, OP also stated that continuation of such a pattern in parking in other developments might actually be detrimental to the larger public good.
93. DDOT calculated that the Applicant would provide ninety-six (96) parking spaces beyond what is required, which DDOT concluded would be more than adequate for the circumstances. DDOT also indicated that residents of the Project would be able to

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petition for Residential Parking Permit ("RPP") status, allowing them to park in any RPP parking space in Ward 3, once they established residency (Exhibit 215).

94. The parties in opposition asserted that the proposed parking was not sufficient to meet demand, and that the Project's parking garage was physically incapable of providing a maximum of 142 parking spaces, which is the number of spaces the Applicant proposes should the Project include 125 condominium units (1.1 ratio plus four spaces for the Day Care Center). The opposition also argued that additional residential parking cannot constitute an amenity of the proposed PUD.
95. The Commission finds that the parking proposed by the Applicant – 1.1 spaces per residential unit and four (4) spaces for the Day Care Center, with eight (8) visitor parking spaces provided in the surface lot – will adequately serve the parking needs of residents of and visitors to the apartment house as well as the employees of the Day Care Center. The Commission finds further that the provision of parking in the Project in excess of the amount required by the Zoning Regulations is a public benefit and project amenity that will meet the parking demand generated by the Project and prevent spillover parking on neighborhood streets.

Construction Management

96. The Applicant proposed a construction management plan derived from agreements executed and successfully implemented previously at other developments in the community. Among other things, the proposed construction management plan included remedies related to payment for damage caused by the Applicant; a list of engineering survey firms that could be retained by property owners and paid by the Applicant; and jobsite rules applicable to site management, cleanliness, deliveries, work hours, traffic restrictions, parking, truck travel routes, and truck queuing. The Applicant later revised its proposed construction management plan to extend the survey area to 300 feet from the Site, to require construction monitoring services, and to prohibit pile-driving (Exhibit 212).
97. The opposition argued that the Applicant's construction management plan was inadequate. Hazel Rebold testified that the proposed plan would not adequately protect the owners of property (Exhibit 200). Betsey Kuhn also testified that the proposed plan was inadequate, stating that property owners should be permitted to select an engineering firm for pre- and post-construction surveys and that the Applicant should not use blasting or pile-driving for construction on the Site.
98. OP concluded that the proposed construction management plan constituted a project amenity.

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99. The Commission finds that the Applicant's proposed construction management plan, as revised, is a public benefit as a proffer not available under matter-of-right development.

Compliance with PUD Standards

100. According to the Applicant, the public benefits and project amenities associated with the proposed PUD are valued (for those items that have a quantifiable value) in excess of \$1,700,000 (*see Exhibit 212*). To be balanced against these benefits are the areas of the zoning flexibility requested by the Applicant.
101. OP concluded that the Applicant agreed to an unusually high level of public benefits and amenities for a residential project, and estimated the quantifiable amenities to be worth more than \$1 million in out-of-pocket public benefits, with the possibility that the benefits are valued at another \$500,000. OP testified that concentrating the height and density on Western Avenue, which necessitates the five percent (5%) flexibility, permits the large open space to serve as a buffer for the neighborhood and the retention of existing mature trees. OP concluded that the additional five percent (5%) flexibility was essential to the successful functioning of the Project, especially in light of the addition of affordable housing. OP concluded that the public benefits of the Project more than justified the zoning flexibility requested.
102. FHORD asserted that the Applicant's proposal did not provide sufficient benefits to the community to warrant approval of the PUD, based on the request for an additional five percent (5%) in height and density.
103. The Commission finds that the Applicant's proffered project amenities and public benefits sufficiently offset any potential adverse effects of the Project. The Applicant seeks a five percent (5%) increase in height and density, pursuant to § 2405.3 of the Zoning Regulations, which the Applicant describes as essential to the successful functioning of the Project and necessary to have the residential building set back from the neighboring residential area and to the inclusion of a half-acre of open space on the Site. The increase in FAR accommodates the retention of the existing R-2 zoning on the Lisner Land and the preservation of a transition zone between higher density commercial uses and lower density residential uses in the vicinity of the Site. The Commission finds that the Applicant's request for additional height and density is sufficiently offset by the proffered project amenities and public benefits.

Consistency with the Comprehensive Plan

104. Mr. Sher, the Applicant's expert in land planning, testified that the Project was not inconsistent with the Comprehensive Plan (*Exhibits 79 and 79A*):

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- a. The Generalized Land Use Map designates the Site in a Housing Opportunity Area, where new or rehabilitated housing is expected and encouraged in significant concentrations.
- b. The Generalized Land Use Map also designates the Site in a Regional Center, defined as being located along a major arterial, served by transit, with the largest commercial functions outside the Central Employment Area, and with large office components.
- c. The Generalized Land Use Map designates the Site within the institutional land use category, which reflects the existing uses.
- d. The Project meets policies of the Housing Element by stimulating a wider range of housing choices and strategies through the production of new units, extending affordable homeownership to low- and moderate-income households, and increasing the supply of child care facilities in residential areas.
- e. The Project furthers policies of the Environmental Protection Element to promote improvement of air quality by promoting land-use patterns and transportation services that decrease reliance on automobiles for community and other routine trips and to protect the quality of land areas by encouraging the planting and retention of private trees.
- f. The Project meets the goals of the Transportation Element to simplify and economize transportation services, to provide appropriate and adequate traffic circulation systems that include and emphasize mass transportation options in new residential developments, and to demonstrate that adequate parking will exist.
- g. The Project meets the goals of the Urban Design Element to create appropriate arrangements of materials, height, scale, and massing to complement the immediate arrangements, to preserve and enhance the outstanding physical qualities of District neighborhoods, and to develop a unifying system of well-designed streets, sidewalks, parks, and pedestrian ways.
- h. The Project is consistent with the Ward 3 Element in the following ways:
 - (i) The Project furthers the major theme in that it protects and preserves the low-density, high-quality character of the ward;
 - (ii) The Project furthers the Ward 3 Economic Development Element by stimulating and facilitating a variety of commercial, retail, and residential development investments appropriate to selected Metrorail

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station areas outside the Central Employment Area, consistent with the Land Use Element and accompanying maps;

- (iii) The Project furthers the Ward 3 Housing Element by focusing the development of new housing on underutilized land within a designated Housing Opportunity Area, providing the greatest housing densities on corridors with the best access to transportation and shopping, encouraging a mix of populations, permitting increased densities (consistent with design scale and infrastructure capacity) in exchange for incorporating low- and moderate-income or elderly housing in development projects, giving zoning preference to projects that include housing near Metrorail stations, and treating housing as an important public amenity when consistent with the ward plan and when for low, moderate, or fixed-income households;
- (iv) The Project furthers the Ward 3 Environmental Protection Element by minimizing reliance on automobiles, promoting pedestrian transit and public transportation, and furthering an aggressive policy of replacing trees and planting new trees;
- (v) The Project furthers the Ward 3 Transportation Element by reviewing transportation impacts as a critical factor in the development, improving the level of service at street intersections for the protection and improvement of the quality of life, air quality, and residential character of the ward, and limiting medium- and high-density residential uses to a major arterial well-served by Metrorail or Metrobus;
- (vi) The Project furthers the Ward 3 Urban Design Element by carefully controlling development to protect the existing scale and low-density character and to enhance the maintenance of existing natural open spaces and other qualities, relating the overall height of new construction to that of adjacent structures, relating the size and proportions of new construction to the scale of adjacent buildings, and providing buffers between high-density residential development and residential districts; and
- (vii) The Project furthers the Ward 3 Land Use Element by maintaining and expanding the housing stock, increasing the supply of child care facilities, directing development to a Housing Opportunity Area, and giving zoning preference to a project that includes housing near a Metrorail station.

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105. OP reported that the Applicant's proposal was consistent with the goals of the Comprehensive Plan (*see Exhibit 146*):

- a. *The Land Use Element:* Friendship Heights is envisioned as an area permitted to develop and evolve as long as the adjacent neighborhood is adequately protected, and it is public policy to increase mixed-use development at Metrorail stations to reduce the larger-scale pattern of increasing automobile usage and air quality degradation. The Project would not have an adverse impact on traffic but would concentrate new residential development in close proximity to a Metrorail and Metrobus station; provide a 240-foot-deep, landscaped, half-acre buffer between the new construction and the nearest single-family residence; and retain a number of mature trees.
- b. *Economic Development Element:* The proposed development would contain four (4) to six (6) affordable housing units and a maximum of 125 housing units, likely supporting a net increase in upper-income residents. The Project would also provide a day care center targeted to the neighborhood residents.
- c. *Housing Element:* Housing is a key part of the total urban living system, and the Comprehensive Plan designates areas where significant housing development can appropriately occur, encouraging multi-unit housing near Metrorail stations. The Project would contribute significantly to realizing the policy of increasing housing in the area, a mixed-use Regional Center concentrated around a Metrorail station. The Housing Element provides for appropriate zoning incentives, such as the density increase requested with the proposed PUD, to encourage developments that include affordable housing and that provide housing near appropriate Metrorail stations.
- d. *Environmental Element:* DDOT estimated that at least fifty percent (50%) of the peak-hour traffic generated by the development would use Metro, and a broad range of shopping, services, and employment is within easy walking distance of the Metro-accessible location. The concentration of development in a taller building will allow the preservation of mature trees and provide more pervious surface than other development patterns serving an equivalent number of people.
- e. *Transportation Element:* The Project would be located in close proximity to the Friendship Heights Metrorail station and adjacent to numerous bus lines in a significant mixed-use area. Focusing development around the Metrorail station puts less pressure on increasing the density of residential areas farther away from Metro, and DDOT concluded that the Project's traffic impact would be negligible, even without the signalization and signage enhancements proposed by the Applicant.

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- f. *Urban Design Element:* The Project, particularly with respect to its massing and the inclusion of open space and landscaped buffer, is consistent with objectives to preserve and enhance the outstanding physical qualities of District neighborhoods, to maintain areas that have a positive physical image, and to ensure that new development within or adjacent to those areas is complementary in scale and character.
 - g. *Ward 3 Element:* The Project will provide new "infill" housing on underutilized land near an appropriate Metrorail station, consistent with design, scale, and infrastructure capacity, as well as providing residential development in a designated Housing Opportunity Area that will include affordable housing and home-ownership opportunities without creating adverse impacts on neighborhood stability, traffic, parking, and environmental quality.
106. The parties in opposition asserted that the Project does not comport with the policies and objectives of the Comprehensive Plan, particularly the Ward 3 Element. The opposition presented expert testimony by George H. Oberlander, AICP, who testified that the Project was inconsistent with provisions of the Ward 3 Element of the Comprehensive Plan concerning the protection of the ward's residential neighborhoods and maintaining the stability and the low-density, high-quality character of the ward; concern about the possibility of unrestrained development that diminishes the quality of life and is often accompanied by undesirable effects, particularly increased traffic, whose spillover effects penetrate nearby residential neighborhoods; maintaining strong residential neighborhoods; evaluating development proposals to avoid adverse impacts on neighborhood stability, traffic, parking, and environmental quality; and controlling land use and future development to protect the existing scale and low-density character and to enhance other qualities of the ward.
107. The Commission credits the testimony of OP and the Applicant's expert in land planning in finding that the proposed PUD, including the PUD-related Zoning Map amendment, is not inconsistent with the Comprehensive Plan. The Project will further several goals and major themes of the Comprehensive Plan, including maximizing land use near Metrorail stations and stabilizing and improving the District's neighborhoods.
108. The Commission is not persuaded by the expert testimony presented by the parties on opposition that the Application is inconsistent with the Ward 3 Element, because the Project design – particularly the transition it will provide between the nearby low-density residential neighborhood and the more intense commercial areas in the Friendship Heights Regional Center – will help ensure the stability of the low-density, high-quality nature of Ward 3. The Project is not likely to have unacceptable effects on the nearby residential area, in part due to the proffered benefits such as the transportation

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management plan. The Project will further goals of the Ward, such as by providing new housing at an appropriate location, affordable housing, and a child care facility.

ANCs

109. At a properly noticed meeting on November 7, 2002, ANC 3E unanimously approved a resolution indicating the ANC's opposition to the PUD application; the resolution indicates that a majority of the ANC commissioners "think that the project merits approval" but the ANC voted against the Project, by a vote of 3-2, because one commissioner "feels that the ANC position should reflect the sentiment expressed by the neighbors" (Exhibit 137).
110. The resolution indicates that ANC 3E heard presentations from the Applicant at three (3) public meetings, including two (2) devoted almost entirely to the proposed PUD, and heard presentations from FHORD and from OP as well as comments and questions from individual community members. The resolution notes that the Applicant "has made significant modifications to its original proposal . . . including reducing the requested square footage, reducing the height, preserving the green space, locating the mass on Western Avenue, increasing the distance from its building to the nearest single-family residence, locating the child care facility on the Western Avenue frontage, and adding an affordable housing component." However, the ANC recognized that "members of the community, both individually and through [FHORD], strongly oppose the requested zoning change and the proposed 8-story, 78.75 foot high, 182,000 square foot project and feel strongly that the proposed development is not consistent with the scale or character of the neighborhood, and that a development allowed under R-5-B zoning, though it would be significantly denser than the surrounding neighborhood, could be consistent with the scale and character of the neighborhood."
111. Robert Gordon testified on behalf of the ANC 3/4G in opposition to the Project, stating that ANC 3/4G's primary concerns were the Project's impacts on traffic and its effects on the neighborhood, safety for motorist and pedestrians, and construction impacts.
112. The Commission afforded the issues and concerns of the ANCs the "great weight" to which they are entitled. In doing so, the Commission fully credited the unique vantage point that the ANCs hold with respect to the impact of the proposed PUD on their constituents. However, the Commission concludes that the ANCs have not offered persuasive advice that would cause the Commission to find that the Project is contrary to the Zoning Regulations or would have an adverse impact on the use of neighboring property. As previously discussed, the Commission finds that the requested PUD-related Zoning Map Amendment is appropriate and that the Project is consistent with the requirements of Chapter 24 of the Zoning Regulations.

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CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process, the Commission has the authority to consider the Application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA.
3. The development of this Project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. Residential use is appropriate for the Site, which is located in a Housing Opportunity Area, in a Regional Center, and within immediate proximity to mass transit. The impact of the Project on the surrounding area is not unacceptable. As set forth in the Findings of Fact, the Project is appropriately designed to respect the surrounding areas, including the low-density residential areas to the east and southeast and the commercial centers to the north, west, and south.
6. The Application can be approved with conditions to ensure that the potential adverse effects on the surrounding area from the development will be mitigated.
7. The Application seeks an increase in height and density as permitted by 11 DCMR § 2405.3. The project benefits and amenities, particularly the provision of housing in a Housing Opportunity Area in an amount greater than that permitted under the existing zoning, the inclusion of affordable housing, the landscaped open space, and the Day Care Center, are a reasonable trade-off for the requested development flexibility.

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8. Approval of the Application is appropriate because the Project is consistent with the present character of the area.
9. Approval of the PUD and the PUD-related map amendment is not inconsistent with the Comprehensive Plan, which designates the Site to be within a Housing Opportunity Area and a Regional Center.
10. In accordance with D.C. Official Code § 1-309.10(d) (2001), the Commission must give great weight to the issues and concerns of the affected ANC. The Commission has carefully considered the report and testimony of ANC 3E, as well as the testimony provided by ANC 3/4G, which was granted party status in this case. (See Findings of Fact Nos. 110 through 113).
11. Approval of the Application will promote the orderly development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
12. Notice of the public hearing was provided in accordance with the Zoning Regulations.
13. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Application for consolidated review of a Planned Unit Development for Square 1663, Lot 805 and a portion of Lot 7 and for a PUD-related Zoning Map Amendment from R-5-B to R-5-C for the Washington Clinic property located in Square 1663, Lot 805. This approval is subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed in accordance with the plans prepared by Shalom Baranes and Associates, dated October 25, 2002, as supplemented by drawings dated December 5, 2002 and January 6, 2003, marked as Exhibits 79, 79A, 175, and 212 respectively in the record, (the "Plans") as modified by the guidelines, conditions, and standards herein.
2. The PUD shall be a residential building, consisting of approximately 182,000 square feet of gross floor area, with no more than 125 dwelling units. The Project shall not exceed a density of 4.15 FAR based exclusively on the site area of the Washington Clinic Land. The building shall not exceed a height of 78.75 feet, as measured in accordance with the Zoning Regulations. The Project may include a roof structure with a height not to exceed

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eighteen (18) feet, six (6) inches as indicated in the Plans and in accordance with the Zoning Regulations.

3. The Applicant shall provide affordable housing as described in Exhibit 223. To the extent that minor modifications are needed in the execution of the program to conform to District or Federal housing programs, the Applicant shall work with the DHCD to make such changes to comply with the same.
4. The Project shall include a Day Care Center for a maximum total enrollment of forty-four (44) children, and the Applicant shall provide the Day Care Center space to the selected operator by a lease for fifty (50) years with a rent not to exceed \$1.00 annually. The Day Care Center shall be constructed on the Lisner Land, in accordance with the architectural plans and drawings referenced in Condition No. 1. The Day Care Center shall have a maximum gross floor area of 3,000 square feet, not to exceed a density of 0.4 FAR exclusively on the Lisner Land.
5. The Day Care Center shall be operated so that enrollment is open to children of employees working within one-quarter mile of the Project and to children of community residents on an equal basis with the goal of achieving a 50-50 ratio between the groups. If the Day Care Center must make an organizational or other change to continue operations, the Day Care Center will continue to promote the 50-50 mix between neighborhood children and children of employees working within one-quarter mile of the Project, with the goal of ensuring that neighborhood children participate in the Day Care Center on an equal or preferred basis with children of employees working within one-quarter mile of the Project.
6. The Project shall include a minimum number of parking spaces in the amount of 1.1 parking spaces per dwelling unit, including eight (8) parking spaces devoted to visitor parking. Parking spaces shall be offered for sale separately from the affordable dwelling units, and no purchaser of an affordable dwelling unit shall be required to purchase a parking space. The Project shall also include four (4) parking spaces to be devoted to employees and/or staff of the Day Care Center. The eight (8) visitor spaces shall be provided on a surface lot in accordance with the Plans. The eight (8) visitor spaces shall be free of charge to visitors, and shall be reserved for use by the Day Care Center during the morning drop-off period (7:30 a.m. through 9:30 a.m.) and the afternoon pick-up period (4:00 p.m. through 6:00 p.m.).
7. The Project shall include one 12-foot by 55-foot loading berth, with a 200-square-foot loading platform, and one 10-foot by 20-foot service/delivery space as shown on the Plans. No deliveries to the Project shall be made during the Day Care Center's morning drop-off period (7:30 a.m. through 9:30 a.m.) or the Day Care Center's afternoon pick-up period (4:00 p.m. through 6:00 p.m.), so as not to interfere with the egress and ingress of parents dropping off children at the Day Care Center or with rush hour traffic.

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8. If the Applicant constructs a lay-by along Military Road as depicted in the Plans, the Applicant shall require the operator of the Day Care Center to send letters to all parents of the Day Care Center informing them that use of the lay-by for drop-off of children or pick-up of children at the Day Care Center is forbidden. In addition, the Applicant shall request DDOT to place signs at the lay-by restricting its use to a five (5) minute period.
9. The Project shall include approximately 24,700 square feet devoted to open, green space that is readily accessible to the public and has no physical barriers to its entry, as depicted on the Plans. The open space shall not be fenced in or enclosed. No playground for the exclusive use of the Day Care Center shall be permitted on the Site. Prohibitions against enclosing the open space and a playground for the exclusive use of the Day Care Center shall be included in the declaration of condominium. The Project shall also include a pedestrian path connecting the residential area with the commercial area, as depicted on the Plans. Landscaping improvements shall be in accordance with the Plans. The Applicant or its successors shall maintain all landscaping improvements in good condition.
10. The Applicant shall retain those trees on the Site as indicated on the landscaping plan included in the Plans.
11. The Applicant shall include landscaping improvements as indicated on the Plans within the 15-foot building line setback along Military Road. The Applicant or its successors shall maintain all landscaping improvements in good condition.
12. Landscaping and improvements to public space along the street elevations of the building shall be in accordance with the plans submitted to the record and as approved by the Public Space Division of DDOT. The Applicant or its successors shall maintain all landscaping improvements.
13. The Applicant shall submit to DDOT its traffic mitigation plan as set forth in the Prehearing Submission (Exhibits 33, 33A, and 33B). Any of the proposed traffic calming measures approved by DDOT shall be accomplished by the Applicant or at the Applicant's expense.
14. The Project shall include a raised pedestrian crosswalk across the new curb cut, and shall provide a stop sign at the entrance approach to Western Avenue to enhance operational efficiency and safety of the driveway.
15. The Applicant shall implement the Transportation Management Plan. To the extent that modifications must be made to the Transportation Management Plan, the Applicant shall obtain DDOT's approval to effectuate such changes. The Applicant shall include in its promotional and marketing materials a summary of the elements of the Transportation Management Plan, including the availability of car-sharing services such as FlexCar. The

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Applicant shall give a copy of the Transportation Management Plan to each purchaser of a unit in the Project.

16. Prior to the issuance of a building permit for the Project's residential building, the Applicant shall contribute \$75,000 to the non-profit Friends of Chevy Chase Park for use in making improvements to Chevy Chase Park.
17. The Applicant shall follow the Revised Construction Management Plan filed as Exhibit 212, as supplemented by Exhibit 223.
18. The Applicant shall work with DDOT to optimize the signal light at the intersection of Western and Wisconsin Avenues. The improvements required to optimize the signal light at the intersection of Western and Wisconsin Avenues and approved by DDOT shall be accomplished by the Applicant or at the Applicant's expense as determined by DDOT.
19. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To make minor modifications to the location and design of the Day Care Center, provided that the building is consistent with the location shown on the Plans;
 - c. To vary the number and location of parking spaces, not to decrease below the minimum of 1.1 parking spaces per unit plus four (4) parking spaces for the Day Care Center;
 - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction; and
 - e. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the Construction Codes or that are otherwise necessary to obtain a final building permit.
20. No building permit shall be issued for this PUD, nor shall the PUD-related Zoning Map Amendment take effect, until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind

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the Applicant and all successors in title to construct on and use this property in accordance with this order or amendment thereof by the Zoning Commission.

21. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
22. The PUD approved by the Zoning Commission shall be valid for a period of two (2) years from the effective date of this order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this order.
23. Pursuant to the Human Rights Act of 1977, D.C. Law 2-38, as amended, codified at D.C. Official Code § 2-1402.67 (2001), the Applicant is required to comply fully with the provisions of the Act, and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits if the Applicant fails to comply with any provision of the Human Rights Act.

Vote of the Zoning Commission taken at is public meeting on April 14, 2003: 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Peter G. May, and James H. Hannaham).

The order was adopted by the Zoning Commission at its public meeting on May 12, 2003, by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, Peter G. May, and James H. Hannaham).

In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon publication in the *D.C. Register*; that is on _____.

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